



Scrutiny of Acts and Regulations Committee

Annual Review 2024 Statutory Rules and Legislative Instruments

May 2026





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Annual Review 2024 Statutory Rules and Legislative Instruments

Parliament of Victoria, Australia
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Terms of Reference

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 17 of the *Parliamentary Committees Act 2003* are:—

17. Scrutiny of Acts and Regulations Committee

The functions of the Scrutiny of Acts and Regulations Committee are—

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly—
 - (i) trespasses unduly on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014*;
 - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
 - (vi) inappropriately delegates legislative power;
 - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
 - (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament—
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill—
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent—whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 2017*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

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Chairperson's Foreword

I am pleased to present the Annual Review of the operations of the Regulation Review Subcommittee (the Subcommittee) to the Parliament of Victoria. The report examines major issues arising out of the scrutiny of subordinate legislation during 2024.

I wish to thank the Members of the Subcommittee during the period between 10 May 2024 and 30 April 2025 in which this subordinate legislation was considered, namely the Hon. David Davis MP (Deputy Chairperson to 3 February 2025), John Pesutto MP (Deputy Chairperson from 17 February 2025), Dylan Wright MP (to 10 September 2024), Eden Foster MP (from 10 September 2024), Rachel Payne MP, and Sheena Watt MP. The Members' attendance and active engagement at meetings enabled the Subcommittee to perform its important scrutiny functions within strict legislative timeframes.

The Subcommittee worked diligently and carefully through the 2024 series. Each statutory rule and legislative instrument was considered in accordance with the requirements of the *Subordinate Legislation Act 1994* and in the context of the *Charter of Human Rights and Responsibilities Act 2006*.

The Subcommittee extends its appreciation to responsible Ministers and departmental officers who provided information and assistance in relation to the 2024 series. The Subcommittee will continue to work collaboratively with Ministers and their Departments to ensure the timely resolution of scrutiny issues.

I acknowledge with gratitude the excellent work of the Subcommittee's secretariat staff through the 2024 statutory rule and legislative instrument series. Elizabeth Murray performed the legal scrutiny of the statutory rules and legislative instruments with diligence and professionalism. I thank her for the provision of timely and informative advice. I thank Helen Mason for her contribution, ongoing oversight and guidance. I also thank Sonya Caruana for her efficient administrative support. I thank Simon Dinsbergs for his additional administrative support and Dr Jeremy Gans for the provision of human rights advice. I also thank Alex Kershaw for her assistance in preparing this Annual Review.

The Subcommittee will continue to use its best endeavours to perform its role on behalf of the Parliament.

Gary Maas MP
Chairperson
Regulation Review Subcommittee

March 2026

Chapter 1

Introduction

1.1 Overview

This report examines the major issues arising out of the scrutiny of subordinate legislation in Victoria by the Regulation Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee). The work outlined in the report was undertaken by the Subcommittee during the 60th Parliament. In particular, the report examines:

- 142 statutory rules in the 2024 Series (see Chapter 2);
- 37 legislative instruments published in the Government Gazette during the 2024 calendar year (see Chapter 3).¹

The 2024 statutory rules series and legislative instruments were considered by the Subcommittee during the 60th Parliament in 10 meetings held between 10 May 2024 and 30 April 2025.

1.2 Background

The power to enact laws is a fundamental function of the Parliament. However, the Parliament may also delegate legislative power to the Executive. These laws are generally referred to as ‘subordinate legislation’.² Subordinate legislation is intended to cover administrative matters and detail, rather than matters of substantive policy. In this regard, the delegation of legislative powers to the Executive is necessary as it ensures that lawmakers possess appropriate expertise, laws may be quickly changed, and the Parliament is not over-burdened with administrative matters.

The delegation of legislative powers to the Executive is a long-standing and widely accepted feature of Westminster-style parliamentary democracies. While subordinate legislation is sometimes considered to be of lesser importance than primary legislation, it may also control and prohibit the conduct of citizens in much the same way as Acts of Parliament.³ Accordingly, as this mode of law-making is subject to less public debate than an Act of Parliament, subordinate legislation may have significant impacts on personal rights and liberties.

As the Parliament has delegated its power to the Executive, the exercise of this power must also be safeguarded and monitored by the Parliament. Parliamentary scrutiny committees, with power to examine subordinate legislation made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster-style Parliaments have kept control over subordinate legislation through the use of legislative scrutiny committees. Scrutiny committees exist in all Australian states and territories. Some of these scrutiny committees examine bills and subordinate legislation, while others examine only subordinate legislation.⁴

Parliamentary committees in Victoria have scrutinised subordinate legislation since 1956. From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising subordinate legislation. In 1992, the Committee was created by the *Parliamentary Committees (Amendment) Act 1992*.

¹ The report examines legislative instruments published in the Victorian Government Gazette during the 2024 calendar year. This includes legislative instruments published between 1 January 2024 and 31 December 2024.

² Subordinate legislation is a broad term which refers to laws which are made by a person or body other than the Parliament. This may include a range of different instruments, including regulations, rules, determinations or directions. In the context of the Subcommittee, subordinate legislation is taken to include ‘statutory rules’ and ‘legislative instruments’ as defined in section 3 of the *Subordinate Legislation Act 1994*. See section 1.4 below for further details about defining these instruments.

³ *Watson v Lee* [1979] 155 CLR 374 at 394.

⁴ Australian jurisdictions which examine both subordinate legislation and bills include the Australian Capital Territory, the Commonwealth, New South Wales, Queensland and Victoria.

1.3 Regulation Review Subcommittee

The Committee is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses.

The Subcommittee is responsible for scrutinising subordinate legislation. In particular, the Subcommittee scrutinises statutory rules and legislative instruments as defined in section 3 of the *Subordinate Legislation Act 1994* (SLA). It may also conduct inquiries in relation to statutory rules and legislative instruments.

The Subcommittee's work can be broadly described as technical legislative scrutiny. The Subcommittee does not directly consider the policy merits of subordinate legislation. However, the policy content of an instrument may provide context for the Subcommittee's scrutiny.

1.3.1 Subcommittee Membership

The Committee was formed on 8 February 2023 for the 60th Parliament. The following members served on the Subcommittee for the period between 10 May 2024 and 30 April 2025 in which the 2024 statutory rules series and legislative instruments were considered:

- Gary Maas MP (Chair)
- Hon David Davis MP (Deputy Chair) (to 3 February 2025)
- Eden Foster MP (from 10 September 2024)
- Rachel Payne MP
- John Pesutto MP (Deputy Chair) (from 17 February 2025)
- Sheena Watt MP
- Dylan Wight MP (to 10 September 2024).

1.4 Role of the Subcommittee – *Subordinate Legislation Act 1994*

In Victoria, the SLA sets out the procedures for making subordinate legislation and sets out the Subcommittee's powers for scrutinising subordinate legislation. Pursuant to the SLA, the Subcommittee scrutinises:

- statutory rules within the meaning of 'statutory rule' in section 3 of the SLA;
- legislative instruments within the meaning of 'legislative instrument' in section 3 of the SLA; and
- Environment Reference Standards under Part 5.2 of the *Environment Protection Act 2017*.⁵

1.4.1 Scrutiny of statutory rules

Pursuant to section 3 of the SLA, statutory rules are:

- a regulation (other than one made by a local authority or by a person or body with jurisdiction limited to a district or locality, or a local law made under Division 3 of Part 3 of the *Local Government Act 2020*) that has been made by or with the consent or approval of the Governor in Council;
- a rule relating to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
- an instrument or class of instrument that is deemed to be a statutory rule or rules by section 4(1)(a) of the SLA or by the authorising Act.

The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the SLA. These principles require the Subcommittee to ensure that statutory rules do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of

⁵ Section 94 of the *Environment Protection Act 2017* sets out the application of the *Subordinate Legislation Act 1994* to Environment Reference Standards.

the SLA. As noted above, the Subcommittee does not comment on matters involving policy and its review focuses on the technical criteria contained in the SLA.

Under section 21 of the SLA, the Subcommittee scrutinises statutory rules to ensure they:

- are within the powers of the authorising Act;
- do not, without clear and express authority, have a retrospective effect, impose a tax, fee, fine, imprisonment or other penalty, purport to shift the onus of proof to a person accused of an offence, or provide for the sub-delegation of powers delegated by the authorising Act;
- are consistent with the general objectives of the authorising Act;
- do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- do not unduly trespass on rights and liberties of the person previously established by law;
- do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014*;
- do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
- are consistent with principles of justice and fairness;
- are not incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights and Responsibilities);
- do not require explanation as to form or intention;
- do not substantially or materially contravene the provisions of the SLA or the *Subordinate Legislation Act 1994 Guidelines* (Guidelines);⁶ and
- are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Subcommittee also ensures compliance with the procedural requirements of the SLA, including whether:

- all appropriate certificates have been received by the Subcommittee;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information;
- the Regulatory Impact Statement (RIS) is adequate;
- the statutory rule is exempted from the requirement to create a RIS under the appropriate category in the SLA and the exemption certificate is adequate;
- there has been compliance with all notice, gazettal and tabling requirements of the SLA.

Detail about the Subcommittee's scrutiny of 2024 statutory rules is set out in Chapter 2.

⁶ *Subordinate Legislation Act 1994 Guidelines* <<https://content.vic.gov.au/sites/default/files/2023-09/Subordinate-Legislation-Act-1994-Guidelines-September-2023.pdf>>.

1.4.2 Scrutiny of legislative instruments

Since 2011, the Subcommittee has scrutinised legislative instruments.⁷ Legislative instruments are instruments that are legislative in character and made under an Act or statutory rule. Legislative instruments may encompass a range of types of instruments, including orders, guidelines, and standards. The Guidelines state that ‘an instrument will generally be considered to have ‘legislative character’ if it contains mandatory requirements with general application to undertake certain action(s), often accompanied by penalties or sanctions for non-compliance’.⁸

The definition of ‘legislative instrument’ in section 3 of the SLA provides examples of instruments that are not legislative instruments, including:

- a statutory rule;
- a local law made under Division 3 of Part 3 of the *Local Government Act 2020*;
- a proclamation of commencement of an Act or any provision of an Act;
- a planning scheme or an amendment to a planning scheme under the *Planning and Environment Act 1987*;
- an instrument of purely administrative character;⁹ or
- a prescribed instrument or prescribed class of instruments.

The power to prescribe an instrument to be a legislative instrument, not to be a legislative instrument, or to be exempt from provisions of the SLA is set out in section 4A of the SLA. Pursuant to section 4A, the *Subordinate Legislation (Legislative Instruments) Regulations 2021* defines prescribed legislative instruments, instruments prescribed to not be legislative instruments and exempt legislative instruments.

The Committee’s power to review legislative instruments is set out in section 25A of the SLA. Under section 25A, the Subcommittee scrutinises legislative instruments to ensure they:

- appear to be within the powers conferred by the authorising Act or the statutory rule under which it is made;
- do not, without clear and express authority being conferred by the authorising Act or the statutory rule under which it is made, have a retrospective effect, impose any tax, fee, fine, imprisonment or other penalty, purport to shift the legal burden of proof to a person accused of an offence, or provide for the subdelegation of powers delegated by the authorising Act or the statutory rule under which it is made;
- are not incompatible with the human rights set out in the Charter of Human Rights and Responsibilities; and
- do not substantially or materially contravene the provisions of the SLA or the Guidelines.

The Subcommittee also ensures compliance with the procedural requirements of the SLA, such as the preparation of a RIS and tabling within required timeframes.

Detail about the Subcommittee’s scrutiny of 2024 legislative instruments is set out in Chapter 3.

⁷ The Subordinate Legislation Amendment Bill 2010 was introduced in August 2010. Amendments to the SLA came into effect on 1 January and 1 July 2011. The amendments relate to the scrutiny of legislative instruments and specifically inserted a new Part 3 into the Subordinate Legislation Act. The amendments essentially duplicate and extend the arrangements relating to the scrutiny of statutory rules to legislative instruments.

⁸ Guidelines, p. 5.

⁹ Section 3(2) of the SLA provides examples of instruments of purely administrative character, including an instrument of delegation, an evidentiary certificate, or an instrument which has the sole purpose of giving notice of the making of another instrument. The Guidelines provide additional guidance in relation to the threshold decision as to whether an instrument is of a legislative or administrative character.

1.5 Operation of the Subcommittee

1.5.1 Meetings of the Subcommittee

The Subcommittee meets regularly to examine and review subordinate legislation. Meetings of the Subcommittee are not open to the public. However, the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at meetings. At the meetings, the Senior Research Officer presents the Subcommittee with written and verbal advice in respect of each statutory rule or legislative instrument. The Subcommittee members discuss each statutory rule and legislative instrument and address any issues or concerns. The Subcommittee assesses whether there has been compliance with the SLA in respect of a statutory rule or legislative instrument.

1.5.2 Reporting to the Parliament

Where the Subcommittee is dissatisfied with any matters or requires clarification, the Subcommittee corresponds with the responsible Minister to highlight its concerns. In the first instance, the Subcommittee will seek an explanation or amendment of the statutory rule or legislative instrument. When its concerns are satisfied and it has concluded its examination of the statutory rule or legislative instrument, the Subcommittee makes a recommendation to the full Committee to publish its correspondence in the *Alert Digest*.¹⁰

If the Subcommittee does not receive a satisfactory explanation, it may prepare a report to Parliament. This report is submitted to all Members of the Committee for formal approval and adoption. The Subcommittee has all the powers and privileges of the full Committee. However, it cannot report directly to Parliament. The Committee may adopt or reject the Subcommittee's report or part of it or make any changes it deems necessary.

A report to Parliament may include a recommendation that a statutory rule or legislative instrument be amended or disallowed in whole or in part. Alternatively, a report provided by way of information to the Parliament may simply outline the Committee's concerns. As a statutory rule or legislative instrument has already commenced operation by the time it is scrutinised by the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to report to Parliament it may also recommend that a statutory rule or legislative instrument be suspended whilst Parliament considers the issues contained in the report. Such a course may be undertaken in the interests of justice and fairness. When statutory rules or legislative instruments are suspended in this manner they are deemed not to have been made. People are not required to comply with them during the period of suspension.

1.5.3 Use of the disallowance procedure

Disallowance is the primary procedural mechanism through which the Parliament may exercise control over subordinate legislation. Disallowance has the effect of revoking the statutory rule or legislative instrument.

Pursuant to sections 23 and 25C of the SLA, any Member of either House of Parliament may give notice of a disallowance motion within 18 sitting days of the tabling of the statutory rule or legislative instrument in that House if:

- the authorising Act under which the statutory rule or legislative instrument is made states that it is subject to disallowance; or
- the Committee has tabled a report under section 21 or 25A of the SLA recommending that the statutory rule or legislative instrument be disallowed in whole or in part; or
- there was a failure to comply with section 15(1), 15(1A) or 16B(1) of the SLA and the Committee has reported that failure to each House of the Parliament.

¹⁰ Copies of the Alert Digest are available from the Committee's website at: <<https://www.parliament.vic.gov.au/get-involved/committees/scrutiny-of-acts-and-regulations-committee/publicationssearch>>.

Disallowance motions may relate to a statutory rule or legislative instrument in whole or in part. Disallowance will not be effective until that House passes a disallowance resolution within 12 sitting days of the disallowance notice.

The Committee must also comply with the 18 sitting day requirement if it is to make a report to Parliament recommending disallowance. This means that the Subcommittee must review and consider all statutory rules and legislative instruments within strict time limits.

The Subcommittee did not make any recommendations for disallowance in relation to the 2024 subordinate legislation.

Chapter 2

Review of Statutory Rules in 2024

2.1 Overview

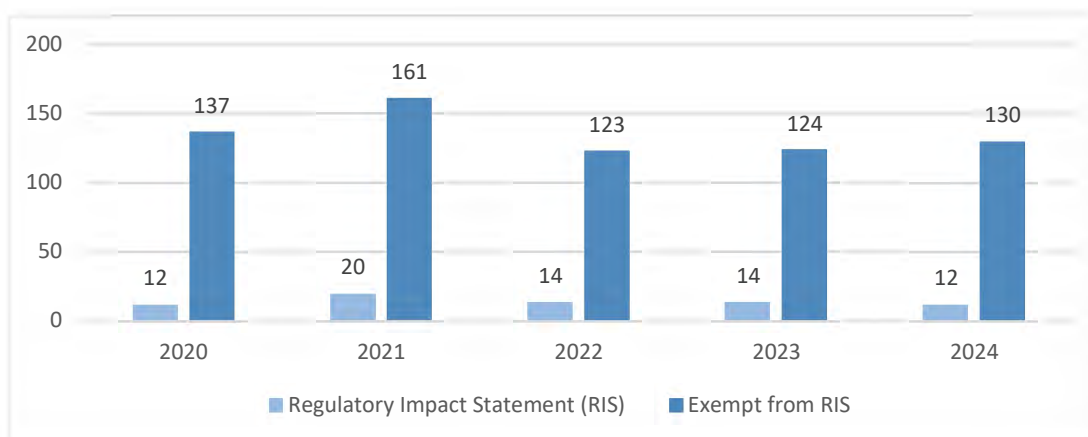
The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the SLA. These principles are set out in full in Chapter 1.¹¹ During 2024, the Subcommittee scrutinised 142 statutory rules.

This chapter provides an overview of the Subcommittee’s scrutiny of statutory rules during 2024 and outlines the key issues arising from these statutory rules.

2.2 Statistics

The 2024 Statutory Rule Series comprised 142 statutory rules. Of those statutory rules, 12 were accompanied by a RIS and 130 were exempt from the RIS process. The Subcommittee considered one National Law Regulation. The number of statutory rules in the 2024 Series was broadly consistent with recent years. Figure 1 below outlines the proportion of statutory rules accompanied by RISs or exempt from the RIS process between 2020 and 2024.

Figure 1: Proportion of statutory rules exempt from Regulatory Impact Statement process 2020-2024



2.2.1 Regulatory Impact Statements

Unless an exemption applies,¹² section 7 of the SLA requires all statutory rules to undergo the RIS process. As outlined in the Victorian Guide to Regulation, the primary objectives of a RIS are to ensure:

- the regulation is only implemented where there is a justified need;
- only the most efficient forms of regulation are adopted; and
- there is an adequate level of public consultation in the development of subordinate legislation.

Where a RIS has been prepared, the Subcommittee examines certain procedural issues, including whether:

- all appropriate certificates have been received by the Subcommittee;

¹¹ See section 1.4.1 of Chapter 1.

¹² Exemptions apply under sections 8 and 9 of the SLA.

- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information; and
- the RIS is adequate, including:
 - whether it properly explains the nature and extent of the problem to be dealt with by the new regulation;
 - the extent to which alternatives have been considered and the appropriateness of those alternatives; and
 - the costs and benefits of the proposed statutory rule and whether the benefits outweigh the costs.

In the 2024 Series, 12 statutory rules were accompanied by RISs. The Subcommittee appreciates the work undertaken by Departments to complete this process in a comprehensive and timely manner.

2.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all statutory rules must be prepared with a RIS, unless they are exempted from doing so under section 8 or 9 of the SLA.¹³ Where a statutory rule has been exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:

- the statutory rule is correctly exempted or whether it should have been made with a RIS;
- the statutory rule is exempted under the appropriate category in the SLA;
- the exemption certificate specifies the section under which the exemption was granted and reasons for the exemption;
- the exemption certificate is signed and dated by the responsible Minister; and
- a statutory rule exempted by a Premier's certificate sunsets within twelve months.

In the 2024 Statutory Rule Series, 130 statutory rules were exempt from the requirement to prepare a RIS. One statutory rule was a National Law Regulation and exempt from the requirement by the enabling legislation. Table 1 below outlines the spread of exemptions from the RIS process in the 2024 Series.

¹³ SLA, section 7.

Table 1: Exemptions from the Regulatory Impact Statement process in the 2024 Series

Section	Exemption	Number Exempt
8(1)(a)	Would not impose significant economic or social burden	72
8(1)(a) and 8(1)(c)	Would not impose significant economic or social burden and fundamentally declaratory or machinery in nature	4
8(1)(a), (c), (f) and (g)	Would not Impose Significant Economic or Social Burden, Fundamentally Declaratory or Machinery Nature, Is required under a National Uniform Legislation Scheme and an Assessment of Costs and Benefits has been undertaken under that Scheme, and Deals with Administrative or Procedures within or as between Departments or Declared Authorities	1
8(1)(b)	Is a rule which relates only to a court or tribunal	17
8(1)(c)	Fundamentally declaratory or machinery in nature	24
8(1)(c)	Fundamentally declaratory or machinery in nature and Exempt by Enabling Act	1
8(1)(c) and (f)	Fundamentally Declaratory or Machinery Nature and Is Required under a National Uniform Legislation Scheme	1
8(1)(c) and (g)	Fundamentally Declaratory or Machinery Nature and Deals with Administration or Procedures within or as between Departments or Declared Authorities	1
8(1)(d)	Only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer	1
8(1)(e)(iii)	Extension of time regulation	6
8(1)(e)(iv), (v) and (vi)	Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument, to not be a legislative instrument, or to be exempt	1
N/A	National Law Regulations	1
Total		130

2.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to statutory rules from the 2024 Series. However, the Subcommittee sought further clarification in relation to 24 statutory rules. In each instance, the Subcommittee wrote to the responsible Minister or relevant entity and received satisfactory responses. The Subcommittee appreciates these responses. The Subcommittee sought responses in relation to the following statutory rules:

- SR No. 3 – Heritage Amendment Regulations 2024
- SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024
- SR No. 31 – Survey Co-ordination Regulations 2024
- SR No. 33 – Child Employment Regulations 2024
- SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024
- SR No. 37 – Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024
- SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024
- SR No. 42 – Victoria Police Regulations 2024

- SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024
- SR No. 49 – Country Fire Authority (Community Fire Refuges) Regulations 2024
- SR No. 59 – Building Amendment (Fees and Other Matters) Regulations 2024
- SR No. 66 – Honorary Justices Regulations 2024
- SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024
- SR No. 83 – Supreme Court (Chapter I Costs) Amendment Rules 2024
- SR No. 90 – Credit Regulations 2024
- SR No. 92 – Local Government (Infringement Notices) Regulations 2024
- SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024
- SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024
- SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024
- SR No. 113 – Plant Biosecurity Amendment Regulations 2024
- SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024
- SR No. 125 – Firearms Amendment Regulations 2024
- SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024
- SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024.¹⁴

Generally, the Subcommittee considers this area of regulation review is working well. The Subcommittee wishes to thank departmental officers and ministerial advisers for their prompt and friendly manner of engagement in 2024.

2.4 Key scrutiny issues

The Subcommittee observed an increased number of scrutiny issues arising from statutory rules from the 2024 Series compared with previous years.¹⁵ The following section provides an overview of the key issues arising from the 2024 Series. The Subcommittee will continue to monitor these issues in the future.

2.4.1 Timeliness of documentation

Section 15A of the SLA requires the responsible Minister to ensure copies of certificates and other documents relevant to a particular statutory rule are given to the Subcommittee within 10 working days after the making of the statutory rule.¹⁶ While failure to comply with this requirement does not affect the operation or effect of the statutory rule,¹⁷ it may undermine the Subcommittee's ability to properly consider the statutory rule within the eighteen sitting-days period for disallowance. The Subcommittee considers timely delivery of documentation to be an important factor in facilitating effective parliamentary oversight of subordinate legislation.

Documentation for six statutory rules from the 2024 Series was provided to the Subcommittee outside the legislative timeframe.¹⁸

¹⁴ Details of correspondence are included in Appendix C.

¹⁵ In 2023, the Subcommittee sought clarification in relation to 13 statutory rules: *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024), p. 9 <<https://www.parliament.vic.gov.au/4a83a0/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/annual-review-2023---statutory-rules-and-legislative-instruments.pdf>>.

¹⁶ SLA, section 15A(2).

¹⁷ SLA, section 15A(3).

¹⁸ These six statutory rules were: SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024; SR No. 49 – Country Fire Authority (Community Fire Refuges) Regulations 2024; SR No. 59 – Building Amendment (Fees and

While this is double the number of instances of late documentation compared to the 2023 Series, it remains a small number and an improvement from 2022 and 2021.¹⁹ The Subcommittee thanks Departments for generally being prompt in the provision of documentation and responsive to its requests.

2.4.2 Failure to comply with publication requirements – section 12 notice of decision

The Subcommittee noted the publication requirements in section 12 of the SLA in relation to one statutory rule from the 2024 Series.²⁰ In this instance, a notice advising of the decision to make the proposed statutory rule was published *after* the statutory rule was made, rather than *before* as subsection (3) of section 12 requires.

Requirements of the Subordinate Legislation Act 1994

Section 12 of the SLA provides:-

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria.
- (2) Notice of a decision not to make a proposed statutory rule must be published as soon as practicable after the decision has been made.
- (3) Notice of a decision to make a proposed statutory rule must be published before the proposed statutory rule is made.
- (4) A failure to comply with subsection (1), (2) or (3) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.

Example: SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024

Subcommittee consideration

The Subcommittee noted section 12(3) requires that the notice of decision to make a statutory rule must be published before the statutory rule is made. Failure to comply with subsection (3) does not affect the operation of the statutory rule. However, the Committee may report the failure to each House of the Parliament.

The Subcommittee highlighted that the Regulations were made on 6 November 2024. However, the notice of decision was published in the Government Gazette on 6 November 2024 and on the Public Notices website on 7 November 2024, which was after the Regulations were made. The Subcommittee drew the Attorney-General's attention to the requirements of section 12 of the SLA.²¹

Minister's response

The Attorney-General responded on 13 April 2025.²² The Attorney-General stated the failure to comply with section 12(3) was the result of an administrative error. The Attorney-General noted this oversight does not affect the operation of the Regulations.

The Subcommittee thanks the Attorney-General for the response.

Other Matters) Regulations 2024; SR No. 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024; SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024; and SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024.

¹⁹ In 2023, documentation for three statutory rules was provided to the Subcommittee outside the legislative timeframe. Comparatively, there were eight instances of delayed documentation in 2022, and 14 instances in 2021.

²⁰ SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024.

²¹ Details of correspondence are included in Appendix C.

²² Ibid.

2.4.3 Failure to comply with notice requirements – section 11 notice inviting comments or submissions

The Subcommittee noted two statutory rules from the 2024 Series which were not prepared in strict compliance with the notice requirements in section 11 of the SLA. These were SR No. 35 and SR No. 44.²³ Pursuant to section 11(1), a notice in accordance with section 11(2) must be published in both the Government Gazette and on the Public Notices website following preparation of a RIS.²⁴ The notices published with respect to SR No.'s 35 and 44 from the 2024 Series, however, were deficient in certain of the required particulars set out in section 11(2).

Requirements of the Subordinate Legislation Act 1994

Section 11 of the SLA provides:

- (1) If a RIS has been prepared, the responsible Minister must ensure that a notice in accordance with subsection (2) is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) if the responsible Minister considers it appropriate, in such trade, professional or public interest publications as the responsible Minister determines.
- (2) A notice must—
 - (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the RIS;
 - (c) specify where a copy of the RIS and of the proposed statutory rule can be obtained;
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
- (3) The responsible Minister must ensure that all comments and submissions are considered before the statutory rule is made.

Section 11 is silent as to the consequence of non-compliance. This is distinct from several other provisions of the SLA. Subsection (4) of section 12, for example, expressly provides that a failure to comply with the notice of decision requirements under subsections (1), (2) and (3) of section 12 will not affect the operation or effect of a statutory rule. There is no equivalent subsection in section 11. Accordingly, the Subcommittee notes the possibility that a failure to comply with section 11 may affect the operation or effect of a statutory rule.

Any issue of non-compliance potentially engages the scrutiny grounds under section 21 of the SLA. The Committee has the power to report to the Parliament under section 21(1)(j) if it considers any statutory rule has been prepared in contravention of any provisions of the SLA or of the Guidelines and 'the contravention is of a substantial or material nature'. The issue for the Subcommittee in considering SR No.'s 35 and 44 was whether the section 11 contravention was a substantial or material contravention.

²³ SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024; SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024.

²⁴ See *Interpretation of Legislation Act 1984* (Vic) section 38M(1)(a), which provides that if an Act, statutory rule or any other subordinate instrument requires notice (however described) to be published in a print newspaper circulating generally in Victoria, that requirement is taken to have been met, for all purposes, if the notice is published on an approved alternative publication Internet site. On 31 July 2022, the Assistant Treasurer declared <www.publicnotices.vic.gov.au> to be an approved alternative publication Internet site from 31 July 2022.

Substantial or material contravention of the *Subordinate Legislation Act 1994*

The Subcommittee previously had reason to consider the significance of a contravention of section 11 in 2019²⁵ and 2021,²⁶ and more recently in relation to two statutory rules from the 2023 Series.²⁷ In each of these past instances, there was a failure by the responsible Minister to ensure notice was published *both* in the Government Gazette and on the Public Notices website as required under section 11(1)(a)-(b).²⁸

The Ministers who were responsible for the relevant statutory rules in 2019 and in 2021 considered the failure to publish a notice strictly in accordance with the terms of section 11 may affect the operation of the statutory rule. They took this view even though significant public consultation in response to the proposed statutory rule had nevertheless taken place. Both responsible Ministers repealed and remade the respective statutory rules in accordance with the legislative requirements.

A different approach was taken in the two instances of non-compliance which arose in the 2023 Statutory Rule Series. Instead of remaking the relevant statutory rule, each responsible Minister formed the view that failing to publish a notice in strict compliance with section 11 would not affect the operation of the statutory rule or otherwise reach the threshold of a 'substantial or material' contravention of the SLA.

The Subcommittee considered the issue in significant detail in each instance in 2023. The Subcommittee's analysis of the significance of a section 11 contravention was set out at length in the Annual Review 2023, published in September 2024.²⁹

The Subcommittee concluded 'there may be a range of views'³⁰ as to the 'substantial or material' nature of a contravention of section 11 of the SLA. 'It is a matter about which reasonable minds may differ'.³¹

Whether a failure to strictly comply with the requirements in section 11 will affect the operation of a statutory rule is a question of statutory interpretation. It can only be conclusively decided by the courts, which, taking a purposive approach, must assign intention to Parliament as to the consequence of contravening the provision.

The Subcommittee noted *Project Blue Sky Inc v Australian Broadcasting Authority* (Project Blue Sky) as the leading authority that:

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.³²

Use of the word 'must' in section 11 prima facie imposes an obligation or lays down a condition. However, mandatory language is relevant to – but not decisive of – the inquiry into the legislative purpose of the provision. Following *Project Blue Sky*, factors which may 'provide guidance in analogous circumstances' as to whether it is a purpose of the legislation that an act done in breach of a provision should be invalid include:

²⁵ SR No. 52 of 2019 – Long Service Benefits Portability Regulations 2019. See *Annual Review 2019: Regulations and Legislative Instruments* (October 2020), p. 8 <<https://www.parliament.vic.gov.au/491ecc/globalassets/committee-publication-record-documents/committee-36/publication-167/annual-review-2019-regulations-and-legislative-instruments.pdf>>.

²⁶ SR No. 92 of 2021 – *Environment Protection Amendment (Wind Turbine Noise) Regulations 2021*. See *Annual Review 2021 and 2022: Statutory Rules and Legislative Instruments* (August 2023), p. 10–11 <<https://www.parliament.vic.gov.au/4a7065/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/annual-review-2021-and-2022.pdf>>.

²⁷ SR No. 116 of 2023 – Associations Incorporation Reform Regulations 2023 and SR No. 119 of 2023 – Casino Control Regulations 2023.

²⁸ See *Interpretation of Legislation Act 1984* (Vic) section 38M(1)(a), which provides that if an Act, statutory rule or any other subordinate instrument requires notice (however described) to be published in a print newspaper circulating generally in Victoria, that requirement is taken to have been met, for all purposes, if the notice is published on an approved alternative publication Internet site. On 31 July 2022, the Assistant Treasurer declared <www.publicnotices.vic.gov.au> to be an approved alternative publication Internet site from 31 July 2022.

²⁹ *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024), pp. 13–21 <<https://www.parliament.vic.gov.au/4a83a0/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/annual-review-2023---statutory-rules-and-legislative-instruments.pdf>>.

³⁰ *Ibid*, p. 20.

³¹ *Ibid*.

³² *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 389–391 (McHugh, Gummow, Kirby and Hayne JJ).

- whether the obligation or condition ‘has a rule-like quality which can be easily identified and applied’, or, alternatively, whether it reflects ‘general directions’, ‘policies’ or ‘matters of policy’;
- whether the statutory provision ‘imposes essential preliminaries to the exercise of [a] function’ or merely ‘regulates the exercise of functions already conferred’ on the decision-maker; and
- whether invalidity of an act done or decision taken in breach of the statutory provision would result in ‘public inconvenience’.³³

It was similarly noted in *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation* that: ‘the force of the obligation will depend on the statutory context and the nature of the obligation in the context in which the obligation is to be performed’.³⁴

In 2023, in considering the legislative purpose of section 11 of the SLA, the Subcommittee had regard to the statute’s broader provisions and its extrinsic materials, such as the explanatory memorandum and second reading speech, as well as to the Guidelines. The Subcommittee noted a general emphasis on public participation and consultation in the process of making subordinate legislation in both the statute and the explanatory material. The Guidelines in particular highlight the importance of obtaining information and comment ‘from the widest set of possible sources’ following preparation of the RIS. However, the Subcommittee further noted that while the SLA and the Guidelines ‘provide some guidance on consultation requirements’, ‘consultation is ultimately up to the discretion of the responsible Minister’.³⁵

In 2023, the Subcommittee also had regard to the practical impact of non-compliance with reference to the particular facts in each instance—including what other steps were taken to advertise the proposed statutory rule following preparation of the RIS. The Subcommittee noted the responsible Ministers’ advice that all stakeholders potentially affected by each proposed statutory rule were consulted and given opportunity to comment on the RIS. The Ministers confirmed there was significant response from a broad range of stakeholders in each instance, making it unclear whether the failure to publish the notice inviting responses in the prescribed manner necessarily resulted in a materially different outcome.³⁶ In the circumstances the Committee did not report to the Parliament in relation to either of the two statutory rules from the 2023 Series.

The Subcommittee relied on the strength of this previous analysis in considering the two instances of non-compliance with section 11 which arose in relation to SR No.’s 35 and 44 from the 2024 Series. The Subcommittee had regard to the particular facts in each instance and whether the failure to publish a notice in accordance with section 11(2) had a substantial or material impact or necessarily resulted in a materially different outcome. The Subcommittee thanks the Ministers for their responses.

Example: SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024
Subcommittee consideration

The Subcommittee considered SR No. 35 at a meeting on 14 October 2024. A Section 11 Notice was published on the Public Notices website and in the Government Gazette on 15 January 2024 in relation to the proposed Regulations, following preparation of the RIS. However, while the gazetted notice complied with the particulars of subsection (2) of section 11, the version of the notice on the website did not. It did not state the reason for, and the objectives of, the proposed statutory rule as required under paragraph (a) of this provision. Nor did it summarise the results of the RIS as required under subsection (b).

The Subcommittee noted that the website version of the notice was published and compliant in some respects, even if it did not contain all the necessary details. In assessing whether this was a substantial or material breach, the Subcommittee noted that the details omitted from the website version of the notice were available in the published copy of the RIS, in addition to the version of the notice which was in

³³ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 389-393 (McHugh, Gummow, Kirby and Hayne JJ).

³⁴ *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation* (2006) 94 SASR 269, [35].

³⁵ *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024), pp. 18–19 <<https://www.parliament.vic.gov.au/4a83a0/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/annual-review-2023---statutory-rules-and-legislative-instruments.pdf>>.

³⁶ *Ibid*, pp. 15–17 and 20.

accordance with section 11(2) and published in the Government Gazette. On these bases, the Subcommittee considered the impact of non-compliance to be minimal rather than substantial or material.

The Subcommittee wrote to the responsible Minister, outlining its deliberations and requesting the agency review its processes to ensure future compliance with the complete requirements of section 11(2) of the SLA.³⁷

Minister's response

The Minister for WorkSafe and the TAC responded on 29 October 2024.³⁸ The Minister stated that when publishing a public notice, the government agency endeavours to communicate in a way that drives engagement with the notice. In this instance, in an attempt to communicate concisely, some of the detail required by section 11(2) of the SLA was inadvertently omitted. The Minister informed the Subcommittee that the agency would review and revise its drafting processes and instructions to ensure future compliance with all provisions of the SLA.

Example: SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024 Subcommittee consideration

The Subcommittee considered SR No. 44 at a meeting on 14 October 2024. The Subcommittee noted that a Section 11 Notice was published on the Public Notices website on 11 April 2024 and in the Government Gazette on 12 April 2024 in relation to the proposed Regulations, following preparation of the RIS. Each notice invited public comments or submissions between its date of publication and 9 May 2024.

However, the Subcommittee noted 11 April 2024 to 9 May 2024 is 28 days, whereas 12 April 2024 to 9 May 2024 is only 27 days. Consequently, in failing to specify a public consultation period of at least 28 days, the notice published in the Government Gazette was not in accordance with section 11(2)(d) of the SLA.

While the Subcommittee noted this contravention, it did not view it as substantial or material within the meaning of section 21(1)(j) of the SLA. In coming to this conclusion, the Subcommittee considered other steps that were taken to advertise the making of the RIS and provide a public consultation period of 28 days, including that both the Public Notices website and the Engage Victoria website gave this length of notice for making comments or submissions, and that other public communication and engagement activities were undertaken to promote the opportunity for consultation.

The Subcommittee wrote to the responsible Minister to draw attention to its deliberations and the requirements of section 11(2) of the SLA.³⁹

Minister's response

The Minister for Water responded on 28 October 2024.⁴⁰ The Minister stated the failure to comply with section 11 was unintentional and due to an administrative oversight. The Minister noted the Department had reviewed internal processes and identified where guidance documents could be updated to improve clarity on notice publication requirements and ensure future compliance with section 11 of the SLA.

2.4.4 Infringements offence consultation certificate

Pursuant to section 6A of the SLA, a statutory rule providing for the enforcement of an offence by an infringement notice must be prepared in consultation with the Department of Justice and take into account the *Attorney-General's Guidelines to the Infringements Act 2006* (AG Guidelines).⁴¹ The responsible Minister must also certify whether the statutory rule meets the requirements of the AG Guidelines, and, if it does not, must specify the reasons why it should nevertheless be made.⁴²

³⁷ Details of correspondence are included in Appendix C.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Attorney-General's Guidelines to the Infringements Act 2006 (Legislating Agencies)* (October 2022) <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislating-Agencies>>.

⁴² SLA, section 6A.

The AG Guidelines state an infringement penalty must be no more than 12 penalty units for an individual and no more than 60 penalty units for a body corporate.⁴³ This is a mandatory requirement. The AG Guidelines also recommend an infringement penalty should generally be set between 10 per cent and 25 per cent of the statutory maximum penalty for the offence.⁴⁴

In the 2024 Series, the Subcommittee corresponded with Ministers in relation to infringement penalties set out in six statutory rules.⁴⁵ In each instance, the infringement penalties set by the statutory rule were outside the 10 to 25 per cent of the statutory maximum penalty range recommended in the AG Guidelines and were not specifically addressed in the information provided in the certificate. None breached a mandatory requirement in the AG Guidelines.

Section 21(1)(i) of the SLA provides that the Committee may report to the Parliament if it considers that a statutory rule laid before the Parliament requires explanation as to its form or intention. On this basis, the Subcommittee sought information on the decision to set infringement penalties outside the recommended range from each of the Ministers responsible for the abovementioned statutory rules.⁴⁶ The Subcommittee thanks the Ministers for their comprehensive and considered responses in each instance.⁴⁷

Example: SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024

SR No. 102 increased infringement penalties for offences against the road rules relating to the use of electric scooters.

Subcommittee consideration

The Subcommittee considered SR No. 102 at a meeting on 12 February 2025. The Subcommittee noted the infringement penalties for rules 262C, 262D and 262F were set between 30 and 35 per cent of the statutory maximum penalty, higher than the 25 per cent recommended in the AG Guidelines.

Rule 262C provides it is an offence to ride an e-scooter on a footpath. Rule 262D provides it is an offence to ride an e-scooter on certain roads. Rule 262F provides it is an offence for a person under 16 years of age to ride an e-scooter. The Subcommittee noted there may be valid reasons for setting these infringement penalties at a higher amount than the recommended range. However, the information provided in the certificate did not address these particular infringement penalties.

Pursuant to section 21(1)(i) of the SLA, the Subcommittee requested additional information from the Minister as to why it was considered appropriate for the infringement penalties for rules 262C, 262D and 262F to exceed the AG Guidelines' recommended range.⁴⁸

Minister's response

The Minister for Roads and Road Safety responded on 20 March 2025.⁴⁹ The Minister noted the implementation of increased penalties under the Regulations was intended to serve as a deterrent to non-compliance, which poses significant safety risks to both e-scooter riders and members of the public.

The Minister noted in particular the significant consequences that may result if the rider of an e-scooter did not comply with the requirements under rules 262C, 262D and 262F of the Road Rules.

The Minister stated that on this basis of enhancing safety through effective deterrence, as well as promoting overall amenity and community confidence in the regulatory framework around e-scooter behaviour, the

⁴³ AG Guidelines, p. 24.

⁴⁴ Ibid.

⁴⁵ These six statutory rules were: SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024; SR No. 33 – Child Employment Regulations 2024; SR No. 92 – Local Government (Infringement Notices) Regulations 2024; SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024; SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024; and SR No. 113 – Plant Biosecurity Amendment Regulations 2024.

⁴⁶ Details of correspondence are included in Appendix C.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

Government had formed a view that it was appropriate to have infringement penalties for these offences set at amounts higher than recommended under the AG Guidelines.

2.4.5 Consultation

Section 6 of the SLA sets out the requirements relating to consultation regarding statutory rules. The section provides that the responsible Minister must ensure that where the Guidelines require consultation:

- (a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
- (b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
- (c) a certificate of consultation in accordance with the Guidelines is issued for that statutory rule.⁵⁰

The Guidelines explain that ‘initial consultation’ – meaning the consultation contemplated under section 6 – ‘occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’⁵¹

Paragraph 73 of the Guidelines states that ‘[g]enerally, initial consultation is required for all proposed statutory rules and legislative instruments’. However, it goes on to note that initial consultation is not required in relation to a sunseting statutory rule which is to be extended for 12 months or less under section 5A of the SLA. Paragraph 74 of the Guidelines adds:

Part 3, Division 3 of these Guidelines sets out additional circumstances in which initial consultation will not be required for a proposed statutory rule or legislative instrument that will be exempted under sections 8 or 9 (statutory rules) or sections 12F or 12G (legislative instruments) of the SL Act.

This is intended to refer Ministers and departmental officers to the table at paragraph 138 of the Guidelines, which sets out specific initial consultation requirements (or exceptions) depending on the category of section 8 exemption issued for a statutory rule.⁵²

Additionally, the Guidelines provide general assistance on what is required for initial consultation with other Ministers under section 6(a) and with the public under section 6(b), including what is meant by ‘significant burden’ at this stage.⁵³ On occasions it may still be difficult to determine exactly what consultation should take place. The Subcommittee highlights that in such circumstances ‘[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule’.⁵⁴

The Guidelines also reinforce the statutory requirement to issue a certificate of consultation in accordance with the Guidelines where the Guidelines require consultation:

The responsible Minister must ensure that where these Guidelines require initial consultation, a certificate of consultation is issued (see sections 6(c) and 12C(c) of Subordinate Legislation Act). A consultation certificate should provide details of who was consulted.⁵⁵

The Subcommittee considers it important to provide details of all the stakeholders who were consulted.

Pursuant to sections 15 and 15A of the SLA, consultation certificates made for the purposes of section 6(c) are required to be tabled in the Parliament and provided to the Committee. However, failure to comply with

⁵⁰ Note that sections 6(2) and 6(3) of the SLA did not commence until 1 March 2025, which was after the statutory rules of the 2024 Series were made.

⁵¹ Guidelines, p. 21.

⁵² Ibid, pp. 32-37.

⁵³ Ibid, pp. 22-23.

⁵⁴ Ibid, p. 23, [87].

⁵⁵ Ibid, p. 24, [91].

these requirements does not affect the operation or effect of the statutory rule (though the Committee may report the failure under section 15 to each House of the Parliament).⁵⁶

In 2024, the Subcommittee's general experience was that initial consultation processes in relation to statutory rules were thorough and appropriate. The Subcommittee liaised with Ministers in relation to the consultation certificates issued for three statutory rules.⁵⁷

Example: SR No. 3 – Heritage Amendment Regulations 2024

SR No. 3 amends the *Heritage Regulations 2017* as a consequence of amendments made to the *Heritage Act 2017* by the *Heritage Amendment Act 2023*, including by prescribing relevant forms and fees and the persons who may apply for a determination that a place or object not be included in the Heritage Register.

Subcommittee consideration

The Subcommittee considered SR No. 3 at a meeting on 10 May 2024. The Subcommittee noted the section 6 consultation certificate listed the government agencies consulted in the preparation of the Regulations, before outlining an additional consultation process. The Subcommittee wrote to the responsible Minister to request the details of any additional consultation that may have taken place in relation to the Regulations, including with non-government stakeholders.⁵⁸

Minister's response

The Minister for Planning responded on 20 June 2024.⁵⁹ The Minister's response explained the additional consultation referenced in the certificate was consultation on the *Heritage Amendment Act 2023*. As a result of this earlier engagement with stakeholders, no additional consultation was considered necessary for the Minister to form a view as to whether the Regulations imposed a significant burden on a sector of the public. The Minister listed the non-government stakeholders that were consulted on the *Heritage Amendment Act 2023* as the National Trust of Australia (Victoria), the Royal Historical Society of Victoria, the International Council of Monuments and Sites Australia, the Australian Institute of Architects, and the Property Council of Australia.

Example: SR No. 33 – Child Employment Regulations 2024

SR No. 33 prescribes certain offences under the *Child Employment Act 2023* as infringement offences as well as requirements for employers to keep records in relation to the employment of a child and other minor matters.

Subcommittee consideration

The Subcommittee considered SR No. 33 at a meeting on 11 September 2024. The certificate stated consultation in accordance with section 6(b) of the SLA was undertaken with 'relevant parties like employer or employee representative bodies'. The Subcommittee noted it was not clear from the consultation certificate which representative bodies were consulted, making it difficult to determine whether this represented adequate consultation involving all sectors of the public who may be significantly affected by the statutory rule. The Subcommittee wrote to the responsible Minister to request details of the parties consulted.⁶⁰

Minister's response

The Minister for Industrial Relations responded on 19 October 2024.⁶¹ The Minister noted that as the child employment regulatory framework underwent a substantial review in 2021/2022, a targeted group of known stakeholders was able to be approached on the need for and scope of the Regulations. A discussion paper

⁵⁶ SLA, section 15(2) and 15A(3).

⁵⁷ These three statutory rules were: SR No. 3 – Heritage Amendment Regulations 2024; SR No. 33 – Child Employment Regulations 2024; SR No. 66 – Honorary Justices Regulations 2024.

⁵⁸ Details of correspondence are included in Appendix C.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

was sent directly to these stakeholders in May 2023 inviting feedback, written submissions or an opportunity for a face-to-face meeting. In response, Industrial Relations Victoria (IRV) received written submissions from the Young Workers Centre; the Shop, Distributive & Allied Employees' Association (SDA); WorkSafe Victoria; and United Church in Australia. The Minister further noted the IRV worked closely with the Wage Inspectorate Victoria in the preparation of the Regulations.

Example: SR No. 66 – Honorary Justices Regulations 2024

SR No. 66 prescribes: a code of conduct for honorary justices; oaths and affirmations to be taken by bail justices and justices of the peace; training courses and professional development for honorary justices, bail justices and justices of the peace; and office holders who are automatically bail justices.

Subcommittee consideration

The Subcommittee considered SR No. 66 at a meeting on 4 November 2024. As a section 8(1)(a) exemption certificate had been issued for the Regulations, the Guidelines only required initial consultation under section 6(b) of the SLA (and therefore a consultation certificate under section 6(c)) if initial consultation was necessary to enable the responsible Minister to form a view as to whether the Regulations would impose a 'significant burden' for the purposes of section 8(1)(a). The Explanatory Memorandum accompanying the Regulations stated an initial consultation process had occurred, suggesting such process was necessary in this instance. However, no consultation certificate had been issued. The Subcommittee resolved to seek explanation from the responsible Minister.⁶²

Minister's response

The Attorney-General responded on 17 December 2024.⁶³ The Attorney-General confirmed consultation was undertaken as a matter of best practice with the youth justice portfolio, Victoria Police, the Royal Victorian Association of Honorary Justices and the honorary justice cohort. The Attorney-General's response included the formal wording and information ordinarily provided in a section 6 consultation certificate.

The Subcommittee thanks these Ministers for their detailed responses.

2.4.6 Adequacy of exemption certificates

As noted above, all statutory rules must be prepared with a RIS, unless they are exempted from doing so under section 8 or 9 of the SLA.

Section 8 sets out the grounds on which a responsible Minister may issue an exemption certificate for a statutory rule. Pursuant to section 8(3) of the SLA, certificates of exemption 'must specify the reason for the exemption'. Accordingly, the Subcommittee expects all section 8 exemption certificates to contain 'detailed reasons' as to 'why the proposed statutory rule ... falls within the relevant exemption'.⁶⁴ As the Guidelines emphasise, '[a]n assertion that the exemption ground applies is not sufficient'.⁶⁵ Certificates should also specify 'the relevant paragraphs of sections 8(1) ... under which the exemption is made'.⁶⁶

The Subcommittee considered the adequacy of exemption certificates in relation to six statutory rules in the 2024 Series.⁶⁷ The Subcommittee thanks the responsible Ministers and relevant departmental officers for their comprehensive responses in each instance.⁶⁸

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Guidelines, p. 38.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ These six statutory rules were: SR No. 31 – Survey Co-ordination Regulations 2024; SR No. 37 – Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024; SR No. 49 – Country Fire Authority (Community Fire Refuges) Regulations 2024; SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024; SR No. 90 – Credit Regulations 2024; SR No. 125 – Firearms Amendment Regulations 2024.

⁶⁸ Details of correspondence are included in Appendix C.

Example: SR No. 31 – Survey Co-ordination Regulations 2024

SR No. 31 prescribes the procedures, standards, forms and other matters relating to the surveying of land, including standards of measurement and accuracy and requirements for the connection of new surveys to existing surveys and permanent marks.

Subcommittee consideration

The Subcommittee considered SR No. 31 at a meeting on 9 September 2024. The Regulations were accompanied by an exemption certificate issued under section 8(1)(a) on the basis that the statutory rule would not impose a significant economic or social burden on a sector of the public. The Subcommittee noted the exemption certificate states the Regulations do not impose a significant economic burden. However, no details are given to support this conclusion, such as the estimated amount of the cost, if any, to the surveying industry as a result of the Regulations. The Subcommittee resolved to seek these details from the Minister.⁶⁹

Minister's response

The Minister for Planning responded on 7 November 2024.⁷⁰ The Minister's response provided significant detail on the two categories of costs imposed by the Regulations, being the cost of installing permanent markers and the cost of running equipment calibration facilities. The Minister concluded the overall economic impact of the Regulations to be approximately \$772,500 per annum, noting this was well below the indicative 'significant burden' threshold of \$2 million per annum set out in the Guidelines.

Example: SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulation 2024

SR No. 68 prescribes Agriculture Victoria Services Pty Ltd and Rolling Stock Holdings (Victoria) Pty Ltd as agencies to which the *Treasury Corporation of Victoria Act 1992* applies. These are corporate bodies owned by the State. The effect of the Regulations is to allow these agencies to borrow from the Treasury Corporation of Victoria.

Subcommittee consideration

The Subcommittee considered SR No. 68 at a meeting on 4 November 2024. The Subcommittee noted two issues with the exemption certificate accompanying the Regulations.

First, the certificate exempts the Regulations under section 8(1)(c), but on the basis that the Regulations 'would not impose a significant economic or social burden on a sector of the public'. This wording is for an exemption under section 8(1)(a), rather than section 8(1)(c), which appears to be the more appropriate exemption ground.

Second, the certificate states the reasons supporting the exemption ground are that the Regulations deal with matters 'of a fundamentally declaratory or machinery nature'. This is the section 8(1)(c) exemption wording, rather than a sufficient reason in support of the exemption.

The Subcommittee wrote to the Treasurer to request explanation of why the Regulations are of a fundamentally declaratory or machinery nature and exempt from the RIS process under section 8(1)(c).⁷¹

Minister's response

The Treasurer responded on 17 November 2024.⁷² The Treasurer noted the Regulations are of a 'fundamentally declaratory or machinery nature' because their sole purpose is to define the term 'prescribed agency' in the *Treasury Corporation of Victoria Act 1992* by declaring two corporate bodies as prescribed agencies.

⁶⁹ Details of correspondence are included in Appendix C.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

Example: SR No. 125 – Firearms Amendment Regulations 2024

SR No. 125 amends the *Firearms Regulations 2018* as a result of amendments to the *Firearms Act 1996* (Act), which amendments confer further powers on police to serve a firearm prohibition order (FPO) and extend the functions of the Independent Broad-based Anti-corruption Commission (IBAC) to monitor and review the exercise of those police powers. The effect of SR No. 125 is to prescribe particulars and information to be included in records and reports under the Act in relation to FPOs.

Subcommittee consideration

The Subcommittee considered SR No. 125 at a meeting on 12 March 2025. The Regulations were accompanied by an exemption certificate issued under section 8(1)(c) on the basis that the Regulations are of a fundamentally declaratory or machinery nature and section 8(1)(g)(i) on the basis that the Regulations deal with administration or procedures within or as between Departments or declared authorities within the meaning of the *Public Administration Act 2004*. The Subcommittee noted the exemption certificate did not specify reasons for the exemption as required under section 8(3) and the Guidelines, and resolved to seek this information from the responsible Minister.⁷³

Minister's response

The Minister for Police responded on 28 May 2025.⁷⁴ The Minister noted the Regulations are merely declaratory or machinery as the burden imposed by the Regulations is derived from obligations set out in the authorising Act. That is, the Regulations prescribe information and particulars for the purposes of sections of the authorising Act. In addition, regulations 6 to 8 of the Regulations satisfy section 8(1)(g)(i), as these provisions provide for matters of administration between the Chief Commissioner of Police, the Minister, a magistrate and the IBAC.

2.4.7 Incorporating material by reference

Section 32 of the *Interpretation of Legislation Act 1984* (ILA) sets out specific lodgement, notice, tabling and public availability requirements in relation to subordinate legislation which purports to apply, adopt or incorporate material by reference. The importance of compliance with these requirements is highlighted in Division 3 of Part 4 of the Guidelines.⁷⁵

Applying, adopting or incorporating any matter contained in a document – other than a document that is a Victorian or Commonwealth Act, a statutory rule made under a Victorian or Commonwealth Act, or a Code as defined in section 32(1) of the ILA – requires:

- a copy of the matter to be lodged with the Clerk of the Parliaments;⁷⁶
- notice of the documents containing the matter and of the fact that a copy of the matter has been lodged with the Clerk of the Parliaments, to be published in the Government Gazette;⁷⁷
- a copy of the notice published in the Government Gazette to be laid before each House of the Parliament;⁷⁸ and
- a copy of the matter to be kept available for public inspection during normal office hours without charge, either at the Department of the responsible Minister or at another public office specified by a notice published in the Government Gazette.⁷⁹

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Guidelines, pp. 56–57.

⁷⁶ As soon as practicable after the statutory rule is required to be laid before each House of the Parliament: ILA, section 32(3)(a)(i).

⁷⁷ As soon as practicable after the copy of the matter has been lodged: ILA, section 32(3)(a)(ii).

⁷⁸ As soon as practicable after the notice is published: ILA, section 32(3)(a)(iii).

⁷⁹ ILA, section 32(3)(b).

The *Subordinate Legislation Regulations 2024* also require the matter to be set out in a table at the end of the statutory rule.⁸⁰ Most importantly, the authorising Act under which a statutory rule is made must confer power to adopt, apply or incorporate material in regulations.⁸¹

In the 2024 Series, the Subcommittee noted three statutory rules which purported to apply, adopt or incorporate material by reference but for which there had not been compliance with section 32 of the ILA, nor, therefore, with the Guidelines.⁸² The Subcommittee alerted the Ministers responsible for these statutory rules – specifically, SR No.'s 31, 42 and 130 – each of whom undertook to rectify the oversight.⁸³

2.4.8 Matters appropriate for subordinate legislation

Section 21(1)(e) of the SLA provides that the Committee may report to the Parliament if it considers a statutory rule contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation.

The Subcommittee considered this ground of scrutiny review in relation to one statutory rule in the 2024 Series.

Example: SR No. 90 – Credit Regulations 2024

The *Credit Regulations 2024* (Regulations) prescribe matters to support the operation of the *Credit Act 1984* (Act), which regulates consumer credit contracts entered into in Victoria prior to 1 November 1996. Consumer credit contracts are loans for personal or domestic purposes repaid over time with an extra charge, such as interest or additional fees.

Section 11(2) of the Act provides several options for methods of calculating the 'accrued credit charge' for certain consumer credit contracts, with one option being, at paragraph (c), a prescribed 'applicable method'.

Regulation 9(2) of the Regulations prescribes an 'applicable method' for the purposes of section 11(2) of the Act, which is:

... to apply the formula set out in Schedule 1 to the Act ... as if it had been amended by inserting the following at the end ...

"... intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28th, 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided."

Notably, the power to 'make regulations for or with respect to prescribing any matter or thing authorized [sic] or required to be prescribed for the purposes of this Act' is provided in section 167 of the Act.

Subcommittee consideration

The Subcommittee considered SR No. 90 at a meeting on 12 February 2025. The Subcommittee noted regulation 9(2) may modify the operation of primary legislation by amending a provision of Schedule 1 of the Act. It noted the content of regulation 9(2) may be more properly dealt with by the Act rather than the Regulations.

The Subcommittee wrote to the responsible Minister, requesting additional information about the effect of regulation 9(2) of the Regulations and whether it modifies the operation of the Act.⁸⁴

⁸⁰ Reg 5. The *Subordinate Legislation Regulations 2014* (Vic) were remade in June 2024.

⁸¹ ILA, section 32(3) and 32(4).

⁸² SR No. 31 – Survey Co-ordination Regulations 2024; SR No. 42 – Victoria Police Regulations 2024; SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024.

⁸³ Details of correspondence are included in Appendix C. See also <<https://www.parliament.vic.gov.au/parliamentary-activity/tabled-documents-database/tabled-document-details/9146>>.

⁸⁴ Details of correspondence are included in Appendix C.

Minister's response

The Minister for Consumer Affairs responded on 24 March 2025.⁸⁵ The Minister noted regulation 9(2) of the Regulations prescribes an 'applicable method' by applying the formula set out in Schedule 1 to the Act 'as if it had been amended'.

The Minister noted this applicable method operates in addition to the other methods established in section 11(2) of the Act, which include, at paragraph (b), the formula set out in Schedule 1 to the Act. Schedule 1, as enacted, remains unamended and remains an applicable means of calculating an accrued credit charge pursuant to section 11(2)(b).

The Minister further noted that regulation 9(2), as drafted, operates consistently with section 32(2) of the ILA, which provides:

- (2) If an Act (whether passed before after the relevant day) authorises or requires provision to be made for or in relation to a matter by a subordinate instrument, the subordinate instrument, if made on or after the relevant day and unless the contrary intention appears in the Act under or pursuant to which it is made—
 - (a) may make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification, the provisions of—
 - (i) an Act ...

The Subcommittee thanks the Minister for this detailed and considered response.

2.4.9 Human rights scrutiny

The Subcommittee scrutinises statutory rules against section 21(ha) of the SLA to ensure compatibility with the human rights set out in the Charter of Human Rights and Responsibilities. Human rights are set out in Part 2 of the Charter of Human Rights and Responsibilities and include the following rights:

- recognition and equality before the law;
- right to life;
- protection from torture and cruel, inhuman or degrading treatment;
- freedom from forced work;
- freedom of movement;
- privacy and reputation;
- freedom of thought, conscience, religion and belief;
- freedom of expression;
- peaceful assembly and freedom of association;
- protection of families and children; and
- taking part in public life.

In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12A of the SLA in respect of each statutory rule. Section 12A provides:

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rule is exempted under sub-section (3).
- (2) A human rights certificate must—
 - (a) certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and
 - (b) if it certifies that, in the opinion of the responsible Minister, the proposed statutory rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—

⁸⁵ Ibid.

- (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitations and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that in his or her opinion–
- (a) The proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (b) The proposed statutory rule only—
 - (i) prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or
 - (iia) prescribes under section 4A(1)(a) an instrument or a class of instrument for the purposes of paragraph (h) of the definition of legislative instrument; or
 - (iib) prescribes under section 4A(1)(b) an instrument or a class of instrument to be, or not to be, a legislative instrument or class of legislative instrument for the purposes of this Act or any specified provision or provisions of this Act; or
 - (c) the proposed statutory rule is an extension regulation.

When assessing the adequacy of a human rights certificate, the Subcommittee must consider whether there is any limitation on any human right set out in the Charter of Human Rights and Responsibilities and, if so:

- the nature of the human right limited;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

The Subcommittee considered all statutory rules from the 2024 Series were compatible with the human rights set out in the Charter of Human Rights and Responsibilities. The Subcommittee did not correspond with any Ministers in relation to human rights issues. Broadly, the human rights certificates issued for statutory rules were clear and well drafted.

Chapter 3

Review of Legislative Instruments in 2024

3.1 Overview

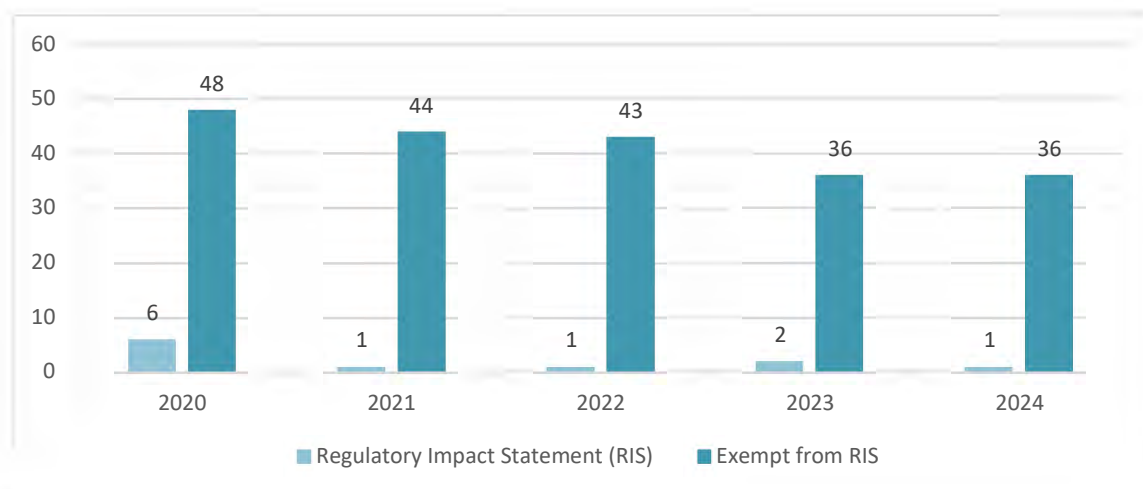
The Subcommittee scrutinises legislative instruments to determine whether they comply with the legislative principles specified in the SLA. These principles are set out in full in Chapter 1.⁸⁶ During 2024, the Subcommittee scrutinised 37 legislative instruments.

This chapter provides an overview of the Subcommittee’s scrutiny of legislative instruments published in the Victorian Government Gazette during the 2024 calendar year.

3.2 Statistics

This report examines the 37 legislative instruments published in the Government Gazette during the 2024 calendar year. Of those instruments, one was accompanied by a RIS. The number of legislative instruments published in 2024 was consistent with 2023, although it marked a slight decrease from previous calendar years. Figure 2 below provides an overview of the proportion of legislative instruments accompanied by RISs or exempt from the RIS process from 2020 to 2024.

Figure 2: Proportion of legislative instruments exempt from Regulatory Impact Statement process 2020-2024



3.2.1 Regulatory Impact Statements

Unless an exemption applies, section 12E of the SLA requires all legislative instruments to undergo the RIS process.^{87, 88}

⁸⁶ See section 1.4.2 of Chapter 1.

⁸⁷ As noted in Chapter 2, the *Victorian Guide to Regulation* sets out the objectives of a RIS. These objectives include ensuring that: the regulation is only implemented where there is a justified need; only the most efficient forms of regulation are adopted; and there is an adequate level of public consultation in the development of subordinate legislation.

⁸⁸ Note, however, that an Environment Reference Standard is instead accompanied by an ‘Impact Assessment’. Section 94 of the *Environment Protection Act 2017* (EP Act) sets out the application of the SLA to environment reference standards. Section 94 provides that the SLA applies to an Environment Reference Standard as if a reference to a RIS were a reference to an Impact Assessment prepared under section 95(1) of the EP Act. There are some differences between the RIS and Impact Assessment processes, but they are broadly similar.

The Subcommittee’s scrutiny of RISs accompanying legislative instruments mirrors the scrutiny of statutory rules. In this regard, where a RIS has been prepared, the Subcommittee examines the same procedural issues. These include assessing whether:

- all appropriate certificates have been received by the Subcommittee;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information; and
- the RIS is adequate and, in particular:
 - whether it properly explains the nature and extent of the problem to be dealt with by the new regulation;
 - the extent to which alternatives have been considered and the appropriateness of those alternatives; and
 - the costs and benefits of the proposed regulations and whether the benefits outweigh the costs.

In 2024, one legislative instrument was accompanied by a RIS. The Subcommittee did not observe any significant issues with this legislative instrument. The Subcommittee appreciates the work undertaken by the relevant Department to complete the RIS process in a comprehensive and timely manner.

3.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all legislative instruments must be prepared with a RIS, unless they are exempted from doing so under section 12F of the SLA. Where a legislative instrument has been exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:

- it is correctly exempted or whether it should have been made with a RIS;
- it is exempted under the appropriate category in the SLA;
- the exemption or exception certificate specifies the section under which the exemption was granted;
- the exemption certificate is signed and dated by the responsible Minister.

Thirty-six legislative instruments were accompanied by a certificate exempting them from the requirement to prepare a RIS. Seven legislative instruments were exempt from the requirement in their enabling legislation. Table 2 below displays the sections of the SLA under which exemptions were made.

Table 2: Legislative instruments exempt from the Regulatory Impact Statement process in 2024

Section	Exemption	Number exempt
12F(1)(a)	Would not impose significant economic or social burden	24
12F(1)(b)	Fundamentally declaratory or machinery in nature	2
12F(1)(c)	Only Increases Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer	1
12F(1)(g)	Undergone, an analytical and consultation process which is equivalent to the regulatory impact statement process	1
12G	Premier’s exemption	1
N/A	Exempt by Enabling Act	7
Total		36

3.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to legislative instruments published in 2024. However, the Subcommittee sought further clarification in relation to 13 legislative instruments.⁸⁹ In each instance, the Subcommittee wrote to the responsible Minister or relevant instrument maker and received satisfactory responses. The Subcommittee appreciates these responses. The Subcommittee sought responses in relation to the following legislative instruments:

- Service Victoria Identity Verification Standards
- Seven Waterways Protection By-laws:
 - By-law No. 02 Waterways Protection 2024 – North Central Catchment Management Authority;
 - By-law No. 3 Waterways Protection 2024 – Wimmera Catchment Management Authority;
 - By-law No. 2 Waterways Protection 2024 – Mallee Catchment Authority;
 - By-law No. 4 Waterways Protection 2024 – West Gippsland Catchment Management Authority;
 - By-law No. 5 Waterways Protection 2024 – Corangamite Catchment Management Authority;
 - By-law No. 1 Waterways Protection 2024 – North East Catchment Management Authority;
 - By-law No. 4 Waterways Protection – Goulburn Broken Catchment Management Authority
- Declaration of a Kind of Insurance that is Excluded from the Definition of Business Insurance under Section 3(2A)
- Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses
- Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres
- Australian Computer Society Incorporated Professional Standards Scheme
- Practitioner Remuneration Order 2025

Generally, the Subcommittee considers this area of regulation review is working well. The Subcommittee wishes to thank departmental officers and ministerial advisers for their prompt and friendly manner of engagement in 2024.

3.4 Key scrutiny issues

The following section provides an overview of the key issues encountered by the Subcommittee in relation to legislative instruments published during the 2024 calendar year.

3.4.1 Timeliness of documentation

Section 16C of the SLA requires the responsible Minister to ensure a copy of the legislative instrument and applicable required documentation is given to the Subcommittee within 10 working days after the making of the legislative instrument. While failure to comply with this requirement does not affect the operation or effect of the legislative instrument,⁹⁰ it may undermine the Subcommittee's ability to consider the legislative instruments within the disallowance period. The Subcommittee considers timely delivery of documentation to be an important factor in facilitating effective parliamentary oversight of subordinate legislation.

The Subcommittee continued to observe an improvement in the timeliness with which documentation was provided to the Subcommittee. In 2024, two legislative instruments were provided outside of the legislative timeframe.⁹¹ This marked a significant decrease from seven legislative instruments in 2023 and six legislative

⁸⁹ Details of correspondence are included in Appendix C.

⁹⁰ SLA, section 16C(3).

⁹¹ These were: Service Victoria Identity Verification Standards; Practitioner Remuneration Order 2025.

instruments in 2022.⁹² The Subcommittee thanks Ministers and relevant departmental officers for their promptness in providing documentation to the Subcommittee.

3.4.2 Timeliness of publication – section 16A publication of legislative instruments

The Subcommittee noted the publication requirements in section 16A of the SLA in relation to one legislative instrument published in the Government Gazette in 2024. In that instance, the legislative instrument was published 11 working days after it was made.

Requirements of the Subordinate Legislation Act 1994

Section 16A of the SLA provides:-

- (1) Subject to subsection (2), after the making of a legislative instrument, the instrument must be published in full—
 - (a) in the next general edition of the Government Gazette; or
 - (b) in a special edition of the Government Gazette within 10 working days after the making of the legislative instrument.
- (2) If, in accordance with the guidelines, a legislative instrument is unsuitable to be published in full, notice of the making of the legislative instrument and where it is available must be published—
 - (a) in the next general edition of the Government Gazette; or
 - (b) a special edition of the Government Gazette within 10 working days after the making of the legislative instrument.

Example: Service Victoria Identity Verification Standards

Subcommittee consideration

The Subcommittee considered the Service Victoria Identity Verification Standards at a meeting on 9 September 2024. The Subcommittee noted the legislative instrument was made on 14 May 2024. However, it was published in a special edition of the Government Gazette 11 working days later, on 29 May 2024.

The Subcommittee noted it was not clear whether late publication will affect the operation of the legislative instrument, as section 16A is silent on the matter of a failure to strictly comply with publication requirements. The Subcommittee sought the responsible Minister's view on the matter.⁹³

Pursuant to section 25A(1)(d) of the SLA, the Committee may report to the Parliament if it considers that any legislative instrument has been prepared in contravention of any of the provisions of the SLA or of the Guidelines and 'the contravention is of a substantial or material nature'. This mirrors the ground for scrutiny of statutory rules in section 21(1)(j) of SLA, which is analysed in section 2.4.3 of Chapter 2 of this Review.

Minister's response

The Minister for Government Services responded on 26 September 2024.⁹⁴ The Minister provided the following background to the decision to publish the legislative instrument on 29 May 2024 instead of one day earlier within the statutory timeframe:

Changes to the Standards were consequential to the Service Victoria Amendment Act 2024. Publication of the Standards prior to the commencement of the amending legislation would have led to an inconsistency between the Standards and the Service Victoria Act 2018. Governor-in-Council approval for commencement of the amending legislation and associated regulations occurred on 28 May 2024. It was therefore necessary that the Standards were not published ahead of the suite of documents for the whole reform package, which occurred on 29 May 2024. This resulted in a one-day delay for the publication of the Standards.

⁹² *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024), p. 37; *Annual Review 2021 and 2022: Statutory Rules and Legislative Instruments* (August 2023), p. 35.

⁹³ Details of correspondence are included in Appendix C.

⁹⁴ *Ibid.*

The Minister further noted the legislative instrument was published and publicly available at the time it commenced operation. The Minister stated that on the advice of the Department of Government Services, the minor delay in publication is not considered to affect the validity of the legislative instrument.

The Subcommittee thanks the Minister for this considered response.

3.4.3 Retrospective effect

Section 25A(1)(b)(ii) of the SLA provides that the Committee may report to the Parliament if it considers a legislative instrument has a retrospective effect without clear and express authority being conferred by the authorising Act under which it is made.

In 2024, the Subcommittee sought further information under this scrutiny ground for one legislative instrument.

Example: Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses

The Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses (Determination) was made by Dairy Food Safety Victoria (DFSV) under the *Dairy Act 2000* (Act) on 15 July 2024. The Determination set classes of dairy licences and fixed fees for those licence classes for the 2024-25 financial year.

Subcommittee consideration

The Subcommittee considered the Determination at a meeting on 4 November 2024. The Subcommittee noted the Determination may have a retrospective effect. The Determination was made on 15 July 2024 but included a provision which stated, 'This instrument comes into effect on 1 July 2024'. The Subcommittee outlined the effect of this provision may be that the holder of a dairy licence would be required to pay fees from 1 July, when the authority for issuing those fees was not made until later that month. The Subcommittee noted the Act conferred no express authority to make a retrospective Determination.

The Subcommittee wrote to the responsible Minister, seeking further information on the retrospective effect of the Determination.⁹⁵

Minister's response

The Minister for Agriculture responded on 6 December 2024.⁹⁶ The Minister noted the Determination was not intended to be retrospective; rather, the reference to 1 July 2024 was supposed to have been amended prior to publication.

However, it was the Minister's view that the error does not render the Determination invalid in its entirety, due to the operation of section 22(1) of the ILA. Section 22(1) provides that every subordinate instrument shall be construed as operating to the full extent of, but so as not to exceed, 'the legislative power of the State of Victoria' or 'the power to make the subordinate instrument conferred by the Act under or pursuant to which it is made'. The section further states that where a provision of a subordinate instrument would exceed that power, it shall nevertheless be valid to the extent to which it does not exceed that power. Specifically, the Minister's response stated:

As the Dairy Act does not expressly confer authority for a subordinate instrument to be made retrospectively, the commencement of the Determination will be 'read down' to be the date on which the Determination was made, being the 15 July 2024 and not 1 July 2024. The remaining clauses in the Determination will nevertheless be valid to the extent they are not in excess of the powers conferred by the Dairy Act to make the Determination, in accordance with section 22(1) of the ILA. This confirms the validity of the Determination.

The Minister also noted, notwithstanding the above, the new fee schedule was not put into practical use by DFSV until 1 August 2024 which is when the licence application renewal process began. The Minister confirmed that, as no licence applicants were charged fees until August, all charges were prospective in practice.

⁹⁵ Ibid.

⁹⁶ Ibid.

The Subcommittee thanks the Minister for this comprehensive response.

3.4.4 Consultation

Section 12C of the SLA sets out the requirements relating to consultation regarding legislative instruments. The section provides that the responsible Minister must ensure that where the Guidelines require consultation:

- (a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- (b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed legislative instrument so that the need for, and the scope of, the proposed legislative instrument is considered;
- (c) a certificate of consultation in accordance with the Guidelines is issued for that legislative instrument.

The Guidelines explain that ‘initial consultation’ – meaning the consultation contemplated under section 12C – ‘occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’.⁹⁷

Paragraph 73 of the Guidelines states that ‘[g]enerally, initial consultation is required for all proposed statutory rules and legislative instruments’. However, the Guidelines go on to note that, where a proposed legislative instrument is to be exempted from the RIS process, the general requirement to undertake initial consultation may be displaced:

Part 3, Division 3 of these Guidelines sets out additional circumstances in which initial consultation will not be required for a proposed statutory rule or legislative instrument that will be exempted under sections 8 or 9 (statutory rules) or sections 12F or 12G (legislative instruments) of the SL Act.⁹⁸

This is intended to refer Ministers and departmental officers to the table at paragraph 138 of the Guidelines, which sets out specific initial consultation requirements (or exceptions) depending on the category of section 12F exemption issued for a legislative instrument.⁹⁹

Additionally, the Guidelines provide general assistance on what is required for initial consultation with other Ministers under section 12C(a) and with the public under section 12C(b), including what is meant by ‘significant burden’ at this stage.¹⁰⁰ On occasions it may still be difficult to determine exactly what consultation should take place. The Subcommittee highlights that in such circumstances ‘[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule or legislative instrument’.¹⁰¹

The Subcommittee’s experience is that initial consultation in relation to legislative instruments was thorough and appropriate during 2024.

The Guidelines also reinforce the statutory requirement to issue a certificate of consultation in accordance with the Guidelines where the Guidelines require consultation:

The responsible Minister must ensure that where these Guidelines require initial consultation, a certificate of consultation is issued (see sections 6(c) and 12C(c) of Subordinate Legislation Act). A consultation certificate should provide details of who was consulted.¹⁰²

The Subcommittee considers it important for consultation certificates to provide details of all the stakeholders who were consulted.

⁹⁷ Guidelines, p. 21.

⁹⁸ Ibid, p. 22, [74].

⁹⁹ Ibid, pp. 32-37.

¹⁰⁰ Ibid, pp. 22-23.

¹⁰¹ Ibid, p. 23, [87].

¹⁰² Ibid, p. 24, [91].

Pursuant to sections 16B and 16C of the SLA, consultation certificates made for the purposes of section 12C are required to be tabled in the Parliament and provided to the Committee. However, failure to comply with these requirements does not affect the operation or effect of the legislative instrument (though the Committee may report the failure under section 16B to each House of the Parliament).¹⁰³

There were two instances in 2024 in which the Subcommittee considered a consultation certificate issued for a legislative instrument may not contain sufficient information to satisfy the Guidelines.

Example: Waterways Protection By-Laws

In June 2024, seven catchment management authorities issued by-laws for waterways protection.

These seven by-laws are: By-law No. 02 Waterways Protection 2024 – North Central Catchment Management Authority; By-law No. 3 Waterways Protection 2024 – Wimmera Catchment Management Authority; By-law No. 2 Waterways Protection 2024 – Mallee Catchment Authority; By-law No. 4 Waterways Protection 2024 – West Gippsland Catchment Management Authority; By-law No. 5 Waterways Protection 2024 – Corangamite Catchment Management Authority; By-law No. 1 Waterways Protection 2024 – North East Catchment Management Authority; By-law No. 4 Waterways Protection – Goulburn Broken Catchment Management Authority.

Each by-law is based on the Waterways Protection Model By-Law 2024 which prescribes matters relating to the protection and care – and conservation and preservation of flora, fauna and habitat within – designated waterways and designated land or works, as well as the control, management and authorisation of works and activities within these designated areas.

Subcommittee consideration

The Subcommittee considered these seven legislative instruments at a meeting on 4 November 2024. Each legislative instrument was accompanied by a consultation certificate, which stated that consultation had occurred with certain stakeholders as well as with the ‘broader community’. The Subcommittee noted the certificates did not provide details about the consultation process undertaken with the broader community. The Subcommittee resolved to seek further information on this consultation from the Minister.¹⁰⁴

Minister’s response

The Minister for Water responded on 17 February 2025.¹⁰⁵ The Minister explained that consultation with the ‘broader community’ was a reference to the earlier opportunity for the public to provide comments and submissions on the proposed Model By-Law in late November and December 2023. The Minister noted the *Water Act 1989*, which authorises making a by-law using a model by-law, requires public consultation for the making of a model by-law but not separate consultation for each of the individual by-laws made using the model. The Minister noted further details about this public consultation including results can be found on the Engage Victoria webpage for the Model By-Law.

Example: Service Victoria Identity Verification Standards

The Service Identity Verification Standards facilitate a secure identity framework for individuals transacting with the Victorian Government through Service Victoria. The Standards remake an earlier version and set out procedural requirements for using, suspending and cancelling electronic identity credentials.

Subcommittee consideration

The Subcommittee considered this legislative instrument at a meeting on 9 September 2024. The Subcommittee noted the accompanying certificate issued under section 12C stated consultation occurred with ‘Service Victoria’s Policy Working Group’, but not with any sector of the public as there is no sector of the public on which a significant burden may be imposed by the legislative instrument. The Subcommittee wrote to the responsible Minister, seeking further information on the agencies included in Service Victoria’s

¹⁰³ SLA, section 16B(3) and 16C(3).

¹⁰⁴ Details of correspondence are included in Appendix C.

¹⁰⁵ Ibid.

Policy Working Group and how this consultation was used to determine the legislative instrument would not impose a significant burden on any sector of the public.¹⁰⁶

Minister's response

The Minister for Government Services responded on 26 September 2024.¹⁰⁷ The Minister's response included the full list of agencies and departments consulted through the Service Victoria Policy Working Group. The Minister noted her view that the legislative instrument would not impose a significant public sector burden was formed from advice received from these agencies and departments as well as from broader consultation undertaken on the *Service Victoria Amendment Act 2024*, which precipitated the making of the legislative instrument. This broader consultation involved the Office of the Victorian Information Commissioner, the Health Complaints Commissioner and Better Regulation Victoria, as well as privacy stakeholders, namely the Law Institute of Victoria, the Australian Privacy Foundation and Electronic Frontiers Australia.

The Subcommittee appreciates the comprehensive and detailed responses provided in each instance.

3.4.5 Adequacy of exemption certificates

As noted above, all legislative instruments must be prepared with a RIS, unless they are exempted from doing so under section 12F of the SLA. Pursuant to section 12F(3) of the SLA, certificates of exemption 'must specify the reasons for the exemption'. Accordingly, the Subcommittee expects all exemption certificates to contain 'detailed reasons' as to 'why the proposed statutory rule or legislative instrument falls within the relevant exemption'.¹⁰⁸ As the Guidelines emphasise, '[a]n assertion that the exemption ground applies is not sufficient'.¹⁰⁹ Exemption certificates should also specify 'the relevant paragraphs of section ... 12F(1) under which the exemption is made'.¹¹⁰

The Subcommittee considered the adequacy of exemption certificates in relation to two legislative instruments published in 2024.

Example: Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres

The Order sets fees for services provided at specified government early learning centres (ELCs), pursuant to powers conferred on the Minister under sections 2A.2.2 and 5.10.4 of the *Education and Training Reform Act 2006*.

Subcommittee consideration

The Subcommittee considered this legislative instrument at a meeting on 20 November 2024. The legislative instrument was accompanied by an exemption certificate issued under section 12F(1)(a) on the basis that it would not impose a significant economic or social burden on a sector of the public. In the exemption certificate, the responsible Minister emphasised that the government ELCs specified in the Order would be charging lower fees than private ELCs but were only located in areas lacking private ELCs. On this basis, the Minister's opinion was that the Order would not impose a significant burden, either on families through high fees or on private ELCs through competition for cheaper services.

The Subcommittee noted that while the exemption certificate stated the fees imposed under the Order would be lower than average for families, the estimated cost of the fees and whether this would be a 'significant' cost within the meaning of the Guidelines (which set a \$2 million indicative threshold) had not been detailed by the Minister. The Subcommittee resolved to seek additional information from the Minister on the economic burden imposed by the Order.¹¹¹

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Guidelines, p. 38.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Details of correspondence are included in Appendix C.

Minister's response

The Minister for Children responded on 28 November 2024.¹¹² The Minister noted the economic burden of the Order, once relevant subsidies had been applied to offset fees, would be approximately \$955,000 in 2025. This is below the \$2 million threshold which the Guidelines set as indicative of whether a significant economic burden is imposed on a sector of the public.

The Subcommittee thanks the Minister for promptly supplying these important details to the Subcommittee.

Example: Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)

The *Duties Act 2000* (Act) provides for the gradual abolition of duty chargeable on premiums paid for contracts of 'business insurance'. The Declaration excludes 'public liability insurance attaching to householder insurance policies' (such as home and contents) from the definition of 'business insurance' for the purposes of the Act.

Subcommittee consideration

The Subcommittee considered this legislative instrument at a meeting on 4 November 2024. The Declaration was accompanied by a section 12F(1)(g) exemption certificate on the basis that it would undergo an analytical and consultation process equivalent to the process for a RIS. The Subcommittee noted that, according to the exemption certificate, there had been consultation with stakeholders that may be affected by the Declaration and an assessment of its costs and benefits.

However, the Subcommittee's view was that further information was necessary to ascertain whether this process was equivalent to the RIS process. The Subcommittee resolved to request details of the consultation and of the costs and benefits analysis (including whether this analysis considered both preferred and alternative options for achieving the regulatory goal), as well as whether the process was independently assessed.¹¹³

Minister's response

The Treasurer responded on 17 December 2024.¹¹⁴ The Treasurer's response provided details of the analysis of costs and benefits, external consultation, and independent assessment undertaken with respect to the Declaration. The Treasurer confirmed the Declaration had formed part of the 2023-24 budget process, which involved assessment of which kinds of insurance should be included in the abolition of business insurance duty. The assessment considered the options of making or not making the Declaration, including against a base case. External consultation was undertaken with the Insurance Council of Australia on issues related to the gradual abolition of business insurance duty, including on the treatment of household public liability insurance. Finally, the State Revenue Office consulted with Better Regulation Victoria on whether a RIS was required for the Declaration, which consultation included a discussion of the processes already undertaken with respect to the Declaration.

The Subcommittee appreciates the Treasurer's comprehensive response.

3.4.6 Human rights scrutiny

The Subcommittee scrutinises legislative instruments against section 25A(1)(c) of SLA to ensure compatibility with the human rights set out in the Charter of Human Rights and Responsibilities. See section 2.4.9 of Chapter 2 of this Review for a full list of the human rights set out in Part 2 of the Charter of Human Rights and Responsibilities.

In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12D of the SLA in respect of each legislative instrument. Section 12D provides:

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed legislative instrument unless the proposed legislative instrument is exempted under subsection (3).
- (2) A human rights certificate for a legislative instrument must—
 - (a) certify whether, in the opinion of the responsible Minister, the proposed legislative instrument does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and
 - (b) if it certifies that, in the opinion of the responsible Minister, the proposed legislative instrument does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—
 - (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitation and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that, in the Minister's opinion, the proposed legislative instrument is of not more than 12 months duration and is necessary to respond to—
 - (a) a public emergency; or
 - (b) an urgent public health issue or an urgent public safety issue; or
 - (c) likely or actual significant damage to the environment, resource sustainability or the economy.

When assessing the adequacy of a human rights certificate, the Subcommittee must consider whether there is any limitation on any human right set out in the Charter of Human Rights and Responsibilities and, if so:

- the nature of the human right limited;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

In relation to the 2024 legislative instruments, the Subcommittee considered all legislative instruments were compatible with human rights set out in the Charter of Human Rights and Responsibilities. The Subcommittee did not correspond with any Ministers in relation to the legislative instruments. Broadly, the human rights certificates issued for legislative instruments published in the 2024 calendar year were clear and well drafted.

Appendix A

Statutory Rules Series 2024

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden

SR No. 3 – Heritage Amendment Regulations 2024

SR No. 4 – Occupational Health and Safety Amendment (Telehandlers) Regulations 2024

SR No. 5 – Livestock Disease Control Amendment Regulations 2024

SR No. 6 – Australian Crime Commission (State Provisions) Regulations 2024

SR No. 8 – Bail Amendment Regulations 2024

SR No. 9 – Co-operatives National Law (Victoria) Local Regulations 2024

SR No. 10 – Public Health and Wellbeing Amendment (iGAS Disease) Regulations 2024

SR No. 12 – Children's Services Amendment Regulations 2024

SR No. 17 – Social Services (Supported Residential Services) Regulations 2024

SR No. 19 – Land Conservation (Vehicle Control) Regulations 2024

SR No. 21 – Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Regulations 2024

SR No. 22 – Equipment (Public Safety) Amendment (Notice of Dangerous Occurrence) Regulations 2024

SR No. 23 – Occupational Health and Safety Amendment (Incident Notification) Regulations 2024

SR No. 25 – National Gas (Victoria) (Declared System Provisions) Regulations 2024

SR No. 28 – Financial Management Regulations 2024

SR No. 31 – Survey Co-ordination Regulations 2024

SR No. 32 – Water (Place of Take) Amendment Regulations 2024

SR No. 33 – Child Employment Regulations 2024

SR No. 41 – Drugs, Poisons and Controlled Substances (Volatile Substances) Regulations 2024

SR No. 42 – Victoria Police Regulations 2024

SR No. 45 – Wildlife Regulations 2024

SR No. 46 – Public Health and Wellbeing (Prescribed Accommodation) Amendment Regulations 2024

SR No. 47 – Residential Tenancies (Specialist Disability Accommodation) Amendment Regulations 2024

SR No. 48 – Sale of Land (Public Auctions) Regulations 2024

SR No. 49 – Country Fire Authority (Community Fire Refuges) Regulations 2024

SR No. 56 – City of Melbourne (Electoral) Amendment Regulations 2024

SR No. 57 – Local Government (Electoral) Amendment Regulations 2024

SR No. 62 – Water (Resource Management) Amendment Regulations 2024

SR No. 63 – Occupational Health and Safety Amendment (Engineered Stone Prohibition) Regulations 2024

SR No. 64 – Petroleum Amendment Regulations 2024

SR No. 65 – Offshore Petroleum and Greenhouse Gas Storage Amendment Regulations 2024

SR No. 66 – Honorary Justices Regulations 2024

SR No. 67 – Fundraising Amendment (National Fundraising Principles) Regulations 2024

SR No. 69 – National Electricity (Victoria) (Regulated Stand-alone Power Systems) Regulations 2024

SR No. 70 – National Energy Retail Law (Victoria) Regulations 2024

SR No. 71 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2024

SR No. 72 – Social Services Amendment Regulations 2024

SR No. 76 – National Parks Regulations 2024

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden (*continued*)

SR No. 80 – Children’s Services Further Amendment Regulations 2024

SR No. 84 – Fences Regulations 2024

SR No. 86 – Water (Infringements) Amendment Regulations 2024

SR No. 87 – Seafood Safety Regulations 2024

SR No. 90 – Credit Regulations 2024

SR No. 91 – Credit (Administration) Regulations 2024

SR No. 92 – Local Government (Infringement Notices) Regulations 2024

SR No. 93 – Valuation of Land Regulations 2024

SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024

SR No. 101 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2024

SR No. 103 – Status of Children Regulations 2024

SR No. 104 – Electricity Industry (Penalty Regime) Amendment Regulations 2024

SR No. 105 – Gas Industry (Penalty Regime) Amendment Regulations 2024

SR No. 109 – Victorian Energy Efficiency Target Amendment (Induction Cooktops and Co-payments) Regulations 2024

SR No. 110 – Royal Botanic Gardens Regulations 2024

SR No. 113 – Plant Biosecurity Amendment Regulations 2024

SR No. 114 – Estate Agents (Exemption) Regulations 2024

SR No. 116 – Local Government (Governance and Integrity) Amendment Regulations 2024

SR No. 117 – Bail Further Amendment Regulations 2024

SR No. 118 – Independent Broad-based Anti-corruption Commission Amendment Regulations 2024

SR No. 119 – Public Interest Monitor Amendment Regulations 2024

SR No. 120 – Terrorism (Community Protection) Amendment Regulations 2024

SR No. 121 – Victorian Inspectorate Amendment Regulations 2024

SR No. 122 – Victorian Energy Efficiency Target Transitional Regulations 2024

SR No. 123 – Wildlife (State Game Reserves) Regulations 2024

SR No. 126 – Drugs, Poisons and Controlled Substances Amendment (Pill Testing) Regulations 2024

SR No. 127 – Victims of Crime (Financial Assistance Scheme) Regulations 2024

SR No. 128 – Victims of Crime Commissioner Amendment Regulations 2024

SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024

SR No. 131 – Fire Rescue Victoria (Firefighters Registration Board) Amendment Regulations 2024

SR No. 132 – Occupational Health and Safety Amendment (Paraquat Dichloride) Regulations 2024

SR No. 137 – National Gas (Victoria) (Declared System Provisions) Amendment Regulations 2024

SR No. 139 – Water Industry (Reservoir Parks Land) Regulations 2024

SR No. 141 – Assisted Reproductive Treatment Amendment Regulations 2024

S. 8(1)(a) and (c) – No Economic or Social Burden and of Fundamentally Declaratory or Machinery Nature

SR No. 2 – Building and Plumbing Amendment Regulations 2024

SR No. 24 – Prisoners (Interstate Transfer) Regulations 2024

SR No. 38 – Service Victoria (Miscellaneous) Amendment Regulations 2024

SR No. 51 – Subordinate Legislation Regulations 2024

S. 8(1)(a), (c), (f), and (g) – Would not Impose Significant Economic or Social Burden, Fundamentally Declaratory or Machinery Nature, Is required under a National Uniform Legislation Scheme and an Assessment of Costs and Benefits has been undertaken under that Scheme, and Deals with Administrative or Procedures within or as between Departments or Declared Authorities

SR No. 94 – Sex Offenders Registration Regulations 2024

S. 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

SR No. 7 – Australian Crime Commission (State Provisions) Regulations 2024

SR No. 13 – Victorian Civil and Administrative Tribunal Amendment (Remuneration Scale under Guardianship and Administration Act 2019) Rules 2024

SR No. 14 – Supreme Court (Chapter I Vexatious Proceedings Amendment) Rules 2024

SR No. 15 – Supreme Court (Chapter VI Powers of Associate Judges and Judicial Registrars in Confiscation Matters Amendment) Rules 2024

SR No. 20 – Children, Youth and Families (Children's Court Family Division) and Children's Court Criminal Procedure Amendment Rules 2024

SR No. 27 – Victorian Civil and Administrative Tribunal (Lists Amendments) Rules 2024

SR No. 36 – Supreme Court Library Rules 2024

SR No. 54 – Victorian Civil and Administrative Tribunal (Disability and Social Services Regulation Amendments) Rules 2024

SR No. 74 – Magistrates' Court General Regulations 2024

SR No. 78 – Supreme Court (Chapter I Judicial Review Amendment) Rules 2024

SR No. 79 – Supreme Court (Chapter III Probate Advertising Amendment) Rules 2024

SR No. 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024

SR No. 88 – County Court (Oath and Affirmation of Office) Regulations 2024

SR No. 89 – Supreme Court (Oath and Affirmation of Office) Regulations 2024

SR No. 133 – Victorian Civil and Administrative Tribunal (Principal Registrar and Other Miscellaneous Amendments) Rules 2024

SR No. 134 – Magistrates' Court General Civil Procedure and Miscellaneous Civil Proceedings (Costs Amendment) Rules 2024

SR No. 135 – County Court (Chapter I Costs Amendment) Rules 2024

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature

SR No. 1 – Cladding Safety Victoria Amendment Regulations 2024

SR No. 11 – Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Amendment Regulations 2024

SR No. 16 – Child Wellbeing and Safety Amendment (Child Safe Standards Integrated Sector Regulators) Regulations 2024

SR No. 18 – Supported Residential Services (Community Visitors) Regulations 2024

SR No. 29 – Crimes (Confiscation) Regulations 2024

SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024

SR No. 34 – Drugs, Poisons and Controlled Substances (Confiscation) Regulations 2024

SR No. 39 – Transfer of Land (Fees) Amendment Regulations 2024

SR No. 60 – Road Safety (Driving Instructors) and (General) Amendment Regulations 2024

SR No. 61 – Road Management (General) and (Works and Infrastructure) Amendment Regulations 2024

SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024

SR No. 73 – Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Further Amendment Regulations 2024

SR No. 75 – Sale of Land (Infringements) Regulations 2024

SR No. 82 – Building (Building Legislation Amendment Act 2023) Transitional Regulations 2024

SR No. 85 – Human Source Management Regulations 2024

SR No. 96 – Bus Safety Amendment Regulations 2024

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature *continued*

SR No. 97 – Transport (Compliance and Miscellaneous) (Infringements) Amendment Regulations 2024

SR No. 98 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Amendment Regulations 2024

SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024

SR No. 107 – Planning and Environment Amendment Regulations 2024

SR No. 111 – Borrowing and Investment Powers (Authority) Amendment Regulations 2024

SR No. 112 – Treasury Corporation of Victoria (Prescribed Agencies) Amendment Regulations 2024

SR No. 115 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2024

SR No. 140 – Service Victoria (General) Amendment Regulations 2024

S. 8(1)(c) and (f) – Fundamentally Declaratory or Machinery Nature and Is Required under a National Uniform Legislation Scheme

SR No. 43 – Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2024

S. 8(1)(c) and (g)(i) – Fundamentally Declaratory or Machinery Nature and Deals with Administration or Procedures within or as between Departments or Declared Authorities

SR No. 125 – Firearms Amendment Regulations 2024

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature and Exempt by Enabling Act

SR No. 106 – Building Amendment Regulations 2024

S. 8(1)(d) – Only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer

SR No. 100 – Planning and Environment (Fees) Amendment Regulations 2024

S. 8(1)(e)(iii) – Extension Regulation

SR No. 37 – Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024

SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024

SR No. 52 – Subordinate Legislation (Water (Estimation, Supply and Sewerage) Regulations 2014) Extension Regulations 2024

SR No. 53 – Subordinate Legislation (Water (Trade Waste) Regulations 2014) Extension Regulations 2024

SR No. 99 – Subordinate Legislation (Country Fire Authority Regulations 2014) Extension Regulations 2024

SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024

S. 8(1)(e)(iv), (v) and (vi) – Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument, to not be a legislative instrument, or to be exempt

SR No. 136 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2024

S. 10 – Regulatory Impact Statements

SR No. 26 – Victorian Energy Efficiency Target Amendment (Prohibition on Telemarketing and Door-to-Door Sales) Regulations 2024

SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024

SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024

SR No. 50 – Victoria Police (Fees and Charges) Regulations 2024

SR No. 55 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2024

SR No. 58 – Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2024

SR No. 59 – Building Amendment (Fees and Other Matters) Regulations 2024

S. 10 – Regulatory Impact Statements *continued*

SR No. 77 – Health Services (Health Service Establishments) Regulations 2024

SR No. 81 – Wildlife (Game) Regulations 2024

SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024

SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024

SR No. 138 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Amendment Regulations 2024

National Law

Education and Care Services National Amendment (Transitional Provisions) Regulations 2024

Appendix B

Legislative Instruments 2024

S. 12F(1)(a) – Would not Impose Significant Economic or Social Burden

Waterways Protection Model By-Law 2024

PrimeSafe Seafood Safety Licencing and Fees Determination 2024

PrimeSafe Meat Industry Licencing and Fees Determination 2024

Revised Health Complaint Handling Standards 2023

Service Victoria Identity Verification Standards

EPA Designation – Classification of black coal fly ash

EPA Determination – Development licence exemption for black coal fly ash

EPA Determination – Permit exemption for black coal fly ash

EPA Determination – Registration exemption for black coal fly ash

Ministerial Prohibition Determination Applicable to Particular Place of Take Approvals that are Tagged – June 2024

By-law No. 02 Waterways Protection 2024 – North Central Catchment Management Authority

By-law No. 3 Waterways Protection 2024 – Wimmera Catchment Management Authority

By-law No. 2 Waterways Protection 2024 – Mallee Catchment Authority

By-law No. 4 Waterways Protection 2024 – West Gippsland Catchment Management Authority

By-law No. 5 Waterways Protection 2024 – Corangamite Catchment Management Authority

By-law No. 1 Waterways Protection 2024 – North East Catchment Management Authority

By-law No. 4 Waterways Protection – Goulburn Broken Catchment Management Authority

Ministerial Order No. 1454 – Government ELC Workforce (Employment Conditions) Order

Ministerial Order No. 1455 – Order Amending Ministerial Order No. 1228 – Victorian Institute of Teaching Registration Fees

Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres

By-law No. 2024-1 Waterways Protection – East Gippsland Catchment Management Authority

Declaration of the Dingo to be Unprotected Wildlife

EPA Designation – Classification of PFAS-impacted soil

2025 Greenhouse Gas Reduction Rates

S. 12F(1)(b) – Fundamentally Declaratory or Machinery Nature

Order to Amend the Water Trading Rules for Declared Water Systems 2023 (Removal of the Grandfathered Use Reserve from the Goulburn to Murray Trade Rule)

Ministerial Prohibition Determination Applicable to Particular Place of Take Approvals that are Tagged – July 2024

S. 12F(1)(c) – Only Increases Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer

Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses

S. 12F(1)(g) – Has undergone an Analytical and Consultation Process which is the equivalent to the Regulatory Impact Statement Process

Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)

S. 12G – Premier’s Exemption Certificate

Declaration of the Dingo to be Unprotected Wildlife

S. 12H – Regulatory Impact Statements

Obligations of Managers of Land or Infrastructure (Urban Stormwater Management and On-site Wastewater Management)

Exempt by Enabling Act

Bar Association of Queensland Professional Standards Scheme

Law Society of Western Australia Professional Standards Scheme

Order in Council Declaring Certain Motor Vehicles Not to be Motor Vehicles – Electric Scooters

Public Interest Determination

Law Society of New South Wales Professional Standards Scheme

Australian Computer Society Incorporated Professional Standards Scheme

Practitioner Remuneration Order 2025

Appendix C

Ministerial Correspondence

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding 2024 regulations and legislative instruments. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee. The Letters to the relevant Ministers and responses are published in the Alert Digest throughout the year and have also been reproduced below.

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence - Sent / Response
SR No. 3 – Heritage Amendment Regulations 2024	Minister for Planning – Hon. Sonya Kilkenny	Requesting further details of any additional consultation which may have occurred in relation to the statutory rule, including with non-government stakeholders.	10 March 2024 21 June 2024
SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024	Minister for Public and Active Transport – Hon. Gabrielle Williams	Requesting explanation of infringement penalties set outside the penalty range recommended in the Attorney-General’s Guidelines.	11 September 2024 25 November 2024
SR No. 31 – Survey Co-ordination Regulations 2024	Minister for Planning – Hon. Sonya Kilkenny	Noting the failure to lodge incorporated documents with the Clerk of the Parliaments and seeking compliance with section 32 of the ILA as soon as practicable.	11 September 2024 7 November 2024
SR No. 33 – Child Employment Regulations 2024	Minister for Industrial Relations – Hon. Tim Pallas	Seeking information on which representative bodies were consulted in the making of the Regulations; and explanation of infringement offences set outside the penalty range recommended in the Attorney-General’s Guidelines.	11 September 2024 19 October 2024
LI – 9.24 – Service Victoria Identity Verification Standards	Minister for Government Services – Hon. Gabrielle Williams	Noting the LI was published in the Government Gazette outside the statutory timeframe, and seeking explanation of the delay. Requesting details of the stakeholders consulted on the proposed LI and how this initial consultation was used to reach the conclusion that the LI would not have a significant economic or social burden on a sector of the public.	11 September 2024 26 September 2024
SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024	Minister for WorkSafe and TAC – Hon. Danny Pearson	Regarding the section 11 notice published on the Public Notices website not according with the requirements set out in section 11(2).	16 October 2024 29 October 2024

SR No. 37 – Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024	Attorney-General – Hon. Jaclyn Symes	Noting the exemption certificate does not specify which paragraph of section 8 the exemption is made under, as required by the Guidelines, and requesting future exemption certificates contain that required information.	16 October 2024 14 November 2024
SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024	Minister for Environment – Hon. Steve Dimopoulos	Noting the documentation was provided to SARC outside the section 15A timeframe.	16 October 2024 7 December 2024
SR No. 42 – Victoria Police Regulations 2024	Minister for Police – Hon. Anthony Carbines	Noting the failure to lodge incorporated documents with the Clerk of the Parliaments, and seeking compliance with section 32 of the ILA as soon as practicable.	16 October 2024 29 October 2024
SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024	Minister for Water – Hon. Harriet Shing	Regarding the section 11 notice published in the Victorian Government Gazette not according with the requirements set out in section 11(2)(d).	16 October 2024 28 October 2024
SR No. 49 – Country Fire Authority (Community Fire Refuges) Regulations 2024	Minister for Emergency Services – Hon. Jaclyn Symes	Noting the exemption certificate may have been issued under the incorrect paragraph of section 8; and the documentation was provided to SARC outside the section 15A timeframe.	6 November 2024 18 November 2024
SR No. 59 – Building Amendment (Fees and Other Matters) Regulations 2024	Minister for Planning – Hon. Sonya Kilkenny	Noting the documentation was provided to SARC outside the section 15A timeframe.	6 November 2024 21 November 2024
SR No. 66 – Honorary Justices Regulations 2024	Attorney-General – Hon. Jaclyn Symes	Requesting details of any consultation which may have occurred in relation to the statutory rule under section 6.	6 November 2024 17 December 2024
SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024	Treasurer – Hon. Tim Pallas	Noting the exemption certificate may have used wording for a different exemption category and the Subcommittee's expectation that section 8 certificates contain adequate explanation of the reasons for granting an exemption.	6 November 2024 17 November 2024

<p>LIs 16.24, 17.24, 19.24, 20.24, 21.24, 22.24, and 23.24 - By-law No. 02 Waterways Protection 2024 - North Central Catchment Management Authority; By-law No. 3 Waterways Protection 2024 - Wimmera Catchment Management Authority; By-law No. 2 Waterways Protection 2024 - Mallee Catchment Authority; By-law No. 4 Waterways Protection 2024 - West Gippsland Catchment Management Authority; By-law No. 5 Waterways Protection 2024 - Corangamite Catchment Management Authority; By-law No. 1 Waterways Protection 2024 - North East Catchment Management Authority; By-law No. 4 Waterways Protection - Goulburn Broken Catchment Management Authority.</p>	<p>Minister for Water - Hon. Harriet Shing</p>	<p>Requesting further information on consultation that took place with the broader community via Engage Victoria.</p>	<p>6 November 2024 17 February 2025</p>
<p>LI - 18.24 - Declaration of a Kind of Insurance that is Excluded from the Definition of Business Insurance under Section 3(2A)</p>	<p>Treasurer - Hon. Tim Pallas</p>	<p>Seeking further information on the analysis and consultation process that informed the making of the LI, including the options considered, the costs and benefits of the preferred option, and whether the analysis was independently assessed.</p>	<p>6 November 2024 23 April 2025</p>
<p>LI - 26.24 - Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses</p>	<p>Minister for Agriculture - Hon. Ros Spence</p>	<p>Noting Dairy Food Safety Victoria made the LI on 15 July 2024; drawing the Minister's attention to the retrospective commencement date of 1 July 2024; seeking further information on the retrospective operation and effect of the LI.</p>	<p>6 November 2024 21 November 2024 and 6 December 2024</p>
<p>LI - 29.24 - Ministerial Order No. 1452 - Fees for Services Provided to Children in Government Early Learning Centres</p>	<p>Minister for Children - Hon. Lizzie Blandthorn</p>	<p>Requesting further information on the economic burden of the fees imposed under the LI.</p>	<p>25 November 2024 28 November 2024</p>
<p>SR No. 83 - Supreme Court (Chapter 1 Costs) Amendment Rules 2024</p>	<p>Attorney-General - Hon. Jaclyn Symes</p>	<p>Noting the documentation was provided to SARC outside the section 15A timeframe.</p>	<p>13 December 2024 10 February 2025</p>
<p>SR No. 90 - Credit Regulations 2024</p>	<p>Minister for Consumer Affairs - Hon. Nick Staikos</p>	<p>Requesting additional information about the effect of regulation 9 and whether it modifies the operation of the <i>Credit Act 1984</i>; and noting the exemption certificate may have been issued under the incorrect paragraph of section 8(1).</p>	<p>17 February 2025 25 March 2025</p>

SR No. 92 – Local Government (Infringement Notices) Regulations 2024	Minister for Local Government – Hon. Nick Staikos	Requesting additional information about setting the penalties at a lower level than recommended in the Attorney-General's Guidelines.	14 February 2025 20 March 2025
SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024	Minister for Agriculture – Hon. Ros Spence	Requesting additional information about setting the penalties at a lower level than recommended in the Attorney-General's Guidelines.	14 February 2025 3 March 2025
SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024	Minister for Roads and Road Safety – Hon. Melissa Horne	Requesting additional information about setting the penalties for rules 262C, 262D, and 262F of the Road Rules at a higher level than the recommended range in the Attorney-General's Guidelines.	14 February 2025 29 April 2025
SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024	Minister for Casino, Gaming and Liquor Regulation – Hon. Enver Erdogan	Noting the documentation was provided to SARC outside the section 15A timeframe.	14 February 2025 3 March 2025
SR No. 113 – Plant Biosecurity Amendment Regulations 2024	Minister for Agriculture – Hon. Ros Spence	Requesting additional information about setting some penalties at a lower level than recommended in the Attorney-General's Guidelines.	17 March 2025 22 April 2025
SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024	Attorney-General – Hon. Sonya Kilkenny	Regarding the section 12 notice of decision to make the Regulations, which was published on the Public Notices website after the statutory rule was made.	17 March 2025 15 April 2025
SR No. 125 – Firearms Amendment Regulations 2024	Minister for Police – Hon. Anthony Carbinis	Requesting reasons as to the why the statutory rule is exempt from the requirement to prepare a regulatory impact statement, pursuant to section 8(3).	17 March 2025 29 May 2025
SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024	Minister for Public and Active Transport – Hon. Gabrielle Williams	Noting the documentation was provided to SARC outside the section 15A timeframe.	17 March 2025 28 May 2025
SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024	Minister for Consumer Affairs – Hon. Nick Staikos	Noting the failure to lodge incorporated documents with the Clerk of the Parliaments and seeking compliance with section 32 of the ILA as soon as practicable.	17 March 2025 2 May 2025

LI - 34.24 - Australian Computer Society Incorporated Professional Standards Scheme	Attorney-General - Hon. Sonya Kilkenny	Noting the definition of "Professional Standards Legislation" in the LI does not include the relevant Victorian Act (the <i>Professional Standards Act 2003</i>) and requesting information in relation to the application of the LI in Victoria.	17 March 2025 16 April 2025
LI - 36.24 - Practitioner Remuneration Order 2025	Attorney-General - Hon. Sonya Kilkenny	Noting the Practitioner Remuneration Order 2025 was provided to SARC outside the section 16C timeframe.	17 March 2025 28 April 2025



Scrutiny of Acts and Regulations Committee

10 May 2024

The Hon. Sonya Kilkenny MP
Minister for Planning
Level 20
1 Spring Street
Melbourne
Victoria, 3000

By email: sonya.kilkenny@parliament.vic.gov.au

Dear Minister

SR No. 3 – Heritage Amendment Regulations 2024

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 10 May 2024.

The Subcommittee approved the statutory rule. However, the Subcommittee seeks further information in relation to a technical scrutiny matter.

Consultation

The statutory rule amends the Heritage Regulations 2017 to prescribe forms, documents and fees payable for the purposes of the *Heritage Act 2017*.

Section 6(b) of the *Subordinate Legislation Act 1994* provides that the responsible Minister must ensure, where the *Subordinate Legislation Act 1994* Guidelines (the Guidelines) require consultation, there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered.

The Subcommittee's view is that consultation should take place with all those affected by a statutory rule. The Subcommittee considers it is important for consultation certificates to provide details of all those consulted.

In this instance, the statutory rule is accompanied by a consultation certificate. The certificate states that consultation was undertaken with government agencies, including the Heritage Council of Victoria, Major Transport Infrastructure Authority, Victorian Health Building Authority, Development Victoria, and State Project Facilitation. The certificate also states further consultation occurred in the preparation of the *Heritage Amendment Act 2023*.

Parliament of Victoria

Scrutiny of Acts and
Regulations Committee

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sarc@parliament.vic.gov.au

Parliament House
Spring Street, East Melbourne
Victoria 3002 Australia

The Subcommittee requests further details of any additional consultation which may have occurred in relation to the statutory rule, including with non-government stakeholders.

The Subcommittee would appreciate your response by no later than 21 June 2024.

Thank you for your assistance with this matter. If you have any questions in relation to this matter, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

CC: Ministerial adviser



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for the Suburbs

1 Spring Street
Melbourne, Victoria 3000 Australia

Ref: BMIN-1-24-2394

Mr Garry Mass MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
MELBOURNE VIC 3002
SARC@parliament.vic.gov.au

Dear Mr Mass

Thank you for your letter of 10 May 2024 confirming approval of the Heritage Amendment Regulations 2024 (**the amending Regulations**) by the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee on that same date.

I understand that the Subcommittee has requested further details of any additional consultation that may have occurred in relation to the amending Regulations, beyond that which was stated in the consultation certificate submitted to the Governor in Council, including with non-government stakeholders.

I can advise that no specific consultation with non-government stakeholders was considered to be necessary in relation to the amending Regulations, as these stakeholders were consulted in relation to the issues addressed by the amending Regulations as part of the wide-ranging consultation which had occurred in relation to the *Heritage Amendment Act 2023 (the amending Act)* throughout 2021 and 2022.

The amending Act and the amending Regulations both commenced operation on 1 February 2024 and work together to provide for online access to heritage documents and notices and Heritage Council hearings, allow for applications to exclude places and objects from the Victorian Heritage Register and otherwise clarify and improve the operation of the *Heritage Act 2017*.

The non-government stakeholders that were consulted in relation to the amending Act included:

- the National Trust of Australia (Victoria)
- the Royal Historical Society of Victoria
- the International Council of Monuments and Sites Australia
- the Australian Institute of Architects



- the Property Council of Australia.

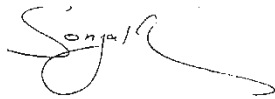
These stakeholders were advised that the amending Act would be given effect through the amending Regulations through the creation of various forms, documents and fees payable for the purposes of the *Heritage Act 2017* as amended, including by specifying who would be eligible to make the various applications permitted by the amending Act and the fees that would be payable. I can advise that no concerns were raised by these stakeholders at the prospect of the amending Regulations being made.

There are four new fees provided for in the amending Regulations and the two fees with the greatest economic burden – being those payable in relation to an application to the Executive Director, Heritage Victoria for a determination that a place or object be excluded from the Victorian Heritage Register – can only be made by a government asset manager, Department Head, public authority or Administrative Office Head.

The other two fees created by the amending Regulations relate to review of a decision of the Executive Director, Heritage Victoria regarding the making of an exclusion determination and the fee for an application for an amendment to consent to work on an archaeological site. No specific consultation with non-government stakeholders was considered necessary in relation to these amendments given the consultation that had already occurred. The total cost to the community of these regulation amendments is not expected to exceed \$32,000 per annum.

I trust this information is of assistance. Thank you for raising this matter.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning
Minister for the Suburbs

Date: 20/06/2024



Scrutiny of Acts and Regulations Committee

11 September 2024

The Hon. Gabrielle Williams
Minister for Public and Active Transport
Level 3
1 Treasury Place
East Melbourne
Victoria, 3002

By email: minister.williams@dgs.vic.gov.au

Dear Minister,

SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 9 September 2024.

The Subcommittee resolved to seek further information about the setting of infringement penalties.

The statutory rule

The Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024 (the Regulations) were made under section 132 of the *Transport (Safety Schemes Compliance and Enforcement) Act 2014*. The Regulations prescribe transport safety infringements and infringement penalties.

Setting infringement penalties

Section 6A of the SLA must be complied with if a statutory provides for enforcement of an offence by an infringement notice. Under section 6A, the responsible Minister must certify that:

- the Department of Justice and Community Safety has been consulted about the enforcement of the offence and the suitability of the offence to be an infringement offence
- the Attorney-General's guidelines under the *Infringements Act 2006* have been taken into account in preparing the statutory rule
- the Minister is satisfied that the proposed statutory rule meets the requirements of the Attorney-General's guidelines or does not meet the

requirements but should be made anyway because of the reasons specified in the certificate.

The Subcommittee notes that a section 6A certificate was issued for the Regulations that confirms the above took place.

The Attorney-General's guidelines provide a range within which infringement penalties should be set. Infringement penalties should be set by reference to the maximum penalty that could be imposed by a court. An infringement fine should be no more than 25 per cent of the statutory maximum penalty for the offence.

Additionally, the guidelines state that the penalty should "not be too lenient". They provide that generally an infringement penalty should not be less than 10 per cent of the maximum penalty a court could impose if the person was prosecuted.

Multiple infringement penalties in the Regulations are below 10 per cent of the maximum penalty that could be imposed by a court:

- penalties at 8.3 per cent of the maximum penalty:
 - *Marine Safety Act 2010*: ss 37(1), 37(2), 37(3), 60, and 80
 - *Marine Safety Regulations 2023*: regulations 63(3), 64(2), and 64(3)
 - *Bus Safety Act 2009*: ss 55F
- penalty at 8 per cent of the maximum penalty: *Bus Safety Act 2009* s 65
- penalties at 5 per cent of the maximum penalty: *Marine Safety Regulations 2023* regs. 15, 16, 17, 18, and 24(2)
- penalties at 6.25 per cent of the maximum penalty: *Marine Safety Regulations 2023* regs. 61(1), 61(3), 61(5), 61(7), and 62(1)
- penalties at 3.3 per cent of the maximum penalty: *Marine Safety Act 2010*: ss 162A(4) and 162A(5).

This means that the Regulations do not comply with the Attorney-General's guidelines. This is contradictory to the section 6A certificate, which states that the Regulations meet the requirements of those guidelines.

To comply with the SLA and the Attorney-General's guidelines, the Regulations should either:

- retain the existing penalties, but have a section 6A certificate that states that the statutory rule does not meet the requirements of the guidelines but should be made anyway, along with an explanation for making regulations that do not meet the guidelines, or
- be amended to have penalties that fit within the 10 to 25 per cent range contained in the guidelines.

The Subcommittee requests an explanation as to why several of the infringement penalties in the Regulations do not comply with the penalty range set out in the Attorney-General's Guidelines.

Response

The Subcommittee would appreciate your response no later than Thursday, 26 September 2024.

Thank you for your assistance with this matter. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Gabrielle Williams MP

Minister for Government Services
Minister for Consumer Affairs
Minister for Public and Active Transport

1 Treasury Place
East Melbourne, Victoria 3002
Australia

Ref: CMIN-1-24-5515

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Mr Maas,

Thank you for your letter regarding SR No. 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024 (TSSCEI Regulations).

I have sought advice from the Department of Transport and Planning (DTP) in relation to the matters you and the Regulations Review Subcommittee (the Subcommittee) have raised.

Firstly, the Subcommittee has queried why several of the infringement penalties in the TSSCEI Regulations appear not to comply with the *Attorney-General's Guidelines to the Infringements Act 2006, For Legislating Agencies, 2022 edition* (Guidelines). The Subcommittee has identified 22 out of the 156 infringement penalties set out in Schedule 2 to the TSSCEI Regulations that are less than 10 per cent of the maximum penalty a court could impose if the person was prosecuted.

The Subcommittee has requested an explanation as to why these infringement penalties do not comply with the penalty range set out in the *Attorney-General's Guidelines*, which provides that an infringement penalty should not be too lenient and generally not be set less than 10 per cent of the maximum penalty that a court could impose if the person were prosecuted.

The primary penalty setting principles stated in the Guidelines (at 2.5.2) are that penalty amounts should be proportional with the offending behaviour and court-imposed maximum penalty and should be set:

- at the minimum level required to achieve deterrence of the specific offending behaviour;
- at a level that is proportionate to the gravity of offending behaviour and represents a fair punishment to the defendant; and
- at a level that is equal to or lower than the typical fine that the Magistrates' Court would impose for that offence, to provide an incentive for the alleged offender to pay the fine instead of choosing to have the matter decided in court.

DTP advises that the TSSCEI Regulations are a re-make of the Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2014 (2014



Regulations), which were sunset by operation of section 5 of the *Subordinate Legislation Act 1994*. As part of a comprehensive review of the infringement offences and related penalties and following extensive consultation with the Fines and Enforcement Services team at the Department of Justice and Community Safety, some additional offences were added (as explained in the Explanatory Memorandum) and some removed. However, the vast majority of the infringeable offences remained the same as in the 2014 Regulations and hence many of the same infringement codes could be used in the new regulations.

The vast majority of penalties remained the same as in the 2014 Regulations, while some of the penalties were increased to ensure consistency among like offences, as follows:

- section 37(3) of the *Marine Safety Act 2010* – from 2 penalty units to 5 penalty units.
- section 80 of the *Marine Safety Act 2010* – from 2 penalty units to 10 penalty units.
- infringement penalties under the Port Management (Local Ports) Regulations 2025 were doubled; and
- regulations 45(1) and (3) of the Bus Safety Regulations 2020 – from 0.4 penalty units to 2 penalty units.

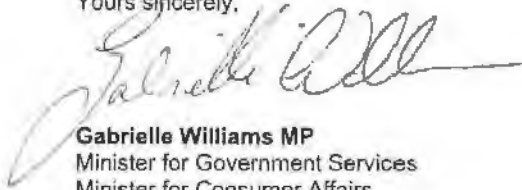
The infringement offences the Subcommittee identifies in its letter as representing less than 10 per cent of the maximum were kept at the existing penalty levels (that is, no change from the 2014 Regulations) for various reasons, including:

- In the case of the penalties at 3.3 per cent of the maximum (*Marine Safety Act 2010*: ss 162A(4) and 162A(5)), an infringement penalty of 2 penalty unit (as against a maximum of 60 penalty units) was not increased as these offences comprise refusing to allow a police officer to inspect a vessel, etc, or refusing to comply with a police direction to produce items for inspection. It was thought that, because this offence had occurred only rarely in the previous 10 years it was unlikely to occur often in the future. Accordingly, there was little deterrent effect required through imposition of a harsher infringement penalty. Further, if such conduct did occur it was likely the police could themselves prosecute the offender for obstruction or some other criminal offence.
- In the case of the penalties at 6.25 per cent of the maximum (*Marine Safety Regulations 2023*, regulations 61(1), 61(3), 61(5), 61(7), and 62(1)), an infringement penalty of 1.25 penalty units (as against a maximum of 20 penalty units) was not increased as the offences concern a recreational boat master not having the required safety equipment on board. It was considered that an infringement penalty of, at current rates, almost \$250 for failing to carry a bucket with a lanyard, for example, was sufficient deterrence, the lower amounts providing a more efficient and proportionate enforcement option for authorised officers who encounter this lower-level offending.
- In the case of the penalties at 5 per cent of the maximum (*Marine Safety Regulations 2023* regulations, 15, 16, 17, 18, and 24(2)) an infringement penalty of 1 penalty unit (as against a maximum of 20 penalty units) was not increased as the offences concern persons failing to notify Safe Transport Victoria and 1 penalty unit seemed to be the consistent infringement penalty for such offences across the Statute Book.
- In the case of the penalties at 8% or higher, these were not altered as it did not seem appropriate to increase the current penalties simply to get to 10 per cent of the maximum.

It is clear from the Guidelines that the primary policy objective in determining infringement penalties should be by reference to the offending conduct rather than maintaining a formulaic relationship to the court maximum penalties. As set out above, the offences the Subcommittee identified meet this criteria.

I hope this explanation addresses the matters raised by the Subcommittee. Thank you again for your letter.

Yours sincerely,



Gabrielle Williams MP
Minister for Government Services
Minister for Consumer Affairs
Minister for Public and Active Transport

25.11.2024



Scrutiny of Acts and Regulations Committee

11 September 2024

The Hon. Sonya Kilkenny
Minister for Planning
Level 20
1 Spring Street
Melbourne
Victoria, 3000

By email: reception.kilkenny@transport.vic.gov.au

Dear Minister

SR No. 31 – Survey Co-ordination Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 9 September 2024.

The Subcommittee resolved to seek further information about two matters.

The statutory rule

The Survey Co-ordination Regulations 2024 (the Regulations) were made under section 22 of the *Survey Co-ordination Act 1958* (the Act) to facilitate the administration of the Act by prescribing:

- standards of measurement and accuracy of land surveys
- requirements for connection of certain surveys to existing surveys, permanent marks and the survey control network
- forms, procedures, standards and other matters relating to surveying of land and the co-ordination of surveying.

Lodging incorporated documents with the Clerk of the Parliaments

Incorporating material by reference is when legislation gives legal effect to provisions set out in a separate document, without repeating the provisions or content in the text of the legislation itself.

Section 22(2) of the Act provides that regulations made under section 22 may incorporate any document. The Regulations incorporate three documents:

- Roelse A., Granger H. W. and Graham J. W., 1971, *The adjustment of the Australian levelling survey 1970–1971*, National Mapping Technical Report No. 12, 2nd edition. Canberra, Department of National Development.
- National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017 dated 11 October 2017 and registered on the Federal Register of Legislation on 13 October 2017.
- Technical Manual published by the Intergovernmental Committee on Surveying and Mapping, version 1.7 dated 26 October 2021.

Section 32 of the *Interpretation Act 1984* (the ILA) sets out the requirements for incorporating material by reference. Section 32(3)(a)(i) of the ILA requires the Minister to cause a copy of an incorporated document to be lodged with the Clerk of the Parliaments as soon as practicable after the statutory rule must be tabled in Parliament. The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) restate this requirement.

After a document has been lodged, the following must occur:

- a notice of the lodgement must be published in the Government Gazette
- a copy of the notice in the Government Gazette must be tabled in both Houses
- a copy of the material incorporated must be made available for inspection during normal office hours by members of the public without charge.

The Subcommittee notes that the above documents incorporated into the Regulations have not been lodged with the Clerk of the Parliaments. As such, the subsequent steps regarding publishing and making the document available have also not occurred.

The Subcommittee considers it important that documents incorporated into legislation are made available to Parliament and to members of the public. It is a fundamental principle of the rule of law that every person subject to the law should be able to access it.

The Guidelines note that failure to fulfil lodging requirements could lead to problems with enforcement. Additionally, unless all relevant material is tabled, the statutory rule does not apply, adopt, or incorporate the material effectively.

The Committee's functions, delegated to the Subcommittee, include determining whether subordinate legislation contravenes the *Subordinate Legislation Act 1994* (SLA) or the Guidelines. The incorporated documents not being lodged with the Clerk of the Parliaments puts the Regulations in contravention of the ILA and the Guidelines.

The Subcommittee requests an explanation as to why the incorporated documents were not lodged with the Clerk of the Parliaments as soon as practicable after the

Regulations were required to be tabled. The Subcommittee also requests that the documents be lodged with the Clerk as soon as practicable.

Reasons for issuing an exemption certificate under section 8

The Regulations are accompanied by an exemption certificate issued under section 8(1)(a) of the SLA on the basis that the statutory rule would not impose a significant economic or social burden on a sector of the public. Section 8(3) requires an exemption certificate to specify reasons for the exemption.

The section 8(1)(a) certificate for the Regulations states:

The reason for forming this opinion is that the proposed statutory rule only prescribes technical matters relating to the surveying of land for the purpose of achieving compliance with the requirements of the Survey Co-ordination Act 1958, which are designed to make completing land surveys more efficient and do not impose a significant economic cost on surveyors.

The surveying industry has been consulted regarding the proposed Regulations as the sector of the public that will be impacted. The consultation has confirmed that the proposed Regulations do not impose a significant economic or social burden.

The Subcommittee is concerned that the exemption certificate does not contain sufficient detail to show how the conclusion that there would not be a significant burden was reached.

The Guidelines state that when considering whether a proposed statutory rule imposes a significant economic or social burden on a sector of the public, the Minister must consider the statutory rule against the base case. The Guidelines state that the base case for regulations that replace sunseting regulations is the situation that would occur if the statutory rule was not made. As the Regulations replace the Survey Co-ordination Regulations 2014, no regulation is the appropriate base case.

The Guidelines state that there is likely to be a significant burden if the measurable social or economic costs to any sector of the public is likely to be greater than \$2 million a year, when compared with the relevant base case. Neither the exemption certificate nor accompanying material provides evidence of the level of social or economic costs imposed by the Regulations, if any.

The Subcommittee would like to understand what the cost to the surveying industry would be compared with the base case. It is not clear in the exemption certificate or explanatory memorandum whether the surveying industry confirmed that the Regulations would not impose a significant burden when compared with the base case (no regulation) or the 2014 Regulations.

The Subcommittee requests further evidence on the claim that the Regulations would not impose a significant economic or social burden on a sector of the public (in this case, the surveying industry).

Response

The Subcommittee would appreciate your response no later than Thursday, 26 September 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for the Suburban

1 Spring Street
Melbourne, Victoria 3000 Australia

Ref: CMIN-1-24-5633

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee, Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
sarc@parliament.vic.gov.au

Dear Mr Maas, 

Thank you for your letter of 11 September 2024 regarding the Scrutiny of Acts and Regulations Committee's consideration of the Survey Co-ordination Regulations 2024 (S.R. No. 31/2024) (the Regulations).

You have advised that the Committee noted that the documents incorporated by reference into the Regulations had not at that time been lodged with the Clerk of the Parliaments. You also advised that the Committee is seeking further explanation about why the Regulations were claimed to be exempt from the requirement to prepare a regulatory impact statement under section 8 of the *Subordinate Legislation Act 1994*.

Lodging incorporated documents with the Clerk of the Parliaments

I advise that the documents incorporated by reference into the Regulations were lodged with the Clerk of Parliament on 17 September 2024. I apologise for the delay in providing those documents to the Parliament which was the result of an administrative oversight. A notice confirming that that has occurred will be published in the Victoria Government Gazette as required by section 32(3)(a)(ii) of the *Interpretation of Legislation Act 1984* shortly, which will advise that the documents are available for inspection by members of the public, free of charge, during normal office hours at the Department of Transport and Planning, 1 Spring Street, Melbourne 3000.



Reasons for issuing an exemption certificate under section 8 of the *Subordinate Legislation Act 1994*

The documents submitted to the Governor in Council in relation to the Regulations include a certificate advising that the Regulations are exempt from the requirement to prepare a regulatory impact statement because they do not impose a significant economic or social burden on a sector of the public as provided for in section 8(1)(a) of the *Subordinate Legislation Act 1994*.

The Regulations outline technical matters required to be performed to ensure there is accuracy and consistency across all permanent marks used in the carrying out of land surveys within Victoria. The primary obligations regarding use of permanent marks and the surveying of land are located within the *Survey Co-ordination Act 1958* (the Act), not the Regulations. The Regulations provide surveyors with the necessary practical guidance to ensure that they can comply with requirements imposed under the Act.

Part 2 of the Regulations sets out requirements relating to permanent marks, which are monuments placed on the ground to assist in the conduct of land surveys.

Across Victoria, there are approximately 150,000 permanent marks. Each year there are approximately 1,000 new permanent marks established and approximately 1,000 permanent marks destroyed. The installation of an individual permanent mark costs approximately \$580 comprising of \$150 for the permanent mark itself, \$250 in labour costs for the installation of the permanent mark and \$180 in labour costs for the registering and creation of the relevant sketch plan. This results in an overall economic cost of approximately \$580,000 per annum.

Part 3 of the Regulations provides guidance to surveyors on how to create a survey plan. In particular, that Part:

- lists the information that is required to be included in a notice of intention to commence new surveys (which is required to be submitted under section 5 of the Act)
- sets out requirements for surveyors to use and maintain appropriate equipment, including the requirement for surveyors to calibrate their equipment regularly to make sure it is accurate
- provides practical guidance on the drafting of survey plans to ensure compliance with requirements in the Act
- provides guidance about the form of plans prepared by or on behalf of a department or public authority that are required to be forwarded to the Surveyor-General under the Act or the Regulations
- outlines the requirements for signing or authorising plans
- sets out what information needs to be shown on the Central Plan Register by the Surveyor-General.

As previously noted, the majority of the regulations in Part 3 give practical guidance to surveyors as to how to comply with requirements imposed by the Act under which the Survey Co-ordination Regulations 2024 are made, namely the *Survey Co-ordination Act 1958*.

The exception to this is regulation 14 which sets out requirements for surveyors to calibrate their survey equipment to make sure it is accurate. In this regard, Land Use Victoria, located in the Department of Transport and Planning, offers free use of facilities across five locations where equipment calibration can occur. There are around 350 bookings per year for use of these facilities. Calibration of the equipment at the facilities takes approximately two hours and requires two survey technicians to perform the required testing. Using an approximation of \$150 per hour, per technician, for labour costs, this equipment calibration, including the post processing of the measurements, costs approximately \$550 per test. On the basis that approximately 350 surveying equipment calibrations are performed each year, the overall economic cost of this requirement to the surveying industry is approximately \$192,500 per annum.

Therefore, the overall economic impact of the Survey Co-ordination Regulations 2024 on the surveying industry is approximately \$772,500 per annum, which is well below the indicative threshold of a significant economic or social burden for the purpose of section 8(1)(a) of the *Subordinate Legislation Act 1994* of \$2 million per annum.

Thank you for raising this matter. I trust this information addresses your queries about the regulatory effect of the Survey Co-ordination Regulations 2024.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning
Minister for the Suburbs

Date: 7/11/2024



Scrutiny of Acts and Regulations Committee

11 September 2024

The Hon. Tim Pallas
Minister for Industrial Relations
Level 4
1 Treasury Place
East Melbourne
Victoria, 3002

By email: treasurer@dtf.vic.gov.au

Dear Minister,

SR No. 33 – Child Employment Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 9 September 2024.

The Subcommittee resolved to seek further information about two matters.

The statutory rule

The Child Employment Regulations 2024 (the Regulations) were made under section 53 of the *Child Employment Act 2003* (the Act). Among other things, the Regulations prescribe infringement offences and relevant penalties for breach of provisions in the Act and Regulations.

Consultation with those affected

Section 6 of the *Subordinate Legislation Act 1994* (the SLA) provides consultation requirements for Ministers when making statutory rules. Section 6(b) requires the Minister to ensure that there is consideration in accordance with the [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) with any sector of the public on which a significant economic or social burden may be imposed.

The consultation certificate issued under section 6 of the SLA states that consultation was undertaken with “relevant parties like employer or employee representative bodies” as sectors of the public on which a significant economic or social burden may be imposed by the Regulations.

It is not clear from the consultation certificate or explanatory memorandum which representative bodies were consulted. It is therefore difficult to determine whether

this represents adequate consultation with those who may be affected by the statutory rule.

The Subcommittee considers it important that consultation certificates provide details of all those consulted. It is also important that consultation is undertaken with all those affected by subordinate legislation.

The Subcommittee requests further information on which relevant parties were consulted in the making of the Regulations.

Setting infringement penalties

Section 6A of the SLA must be complied with if a statutory provides for enforcement of an offence by an infringement notice. Under section 6A, the responsible Minister must certify that:

- the Department of Justice and Community Safety has been consulted about the enforcement of the offence and the suitability of the offence to be an infringement offence
- the Attorney-General's guidelines under the *Infringements Act 2006* have been taken into account in preparing the statutory rule
- the Minister is satisfied that the proposed statutory rule meets the requirements of the Attorney-General's guidelines or does not meet the requirements but should be made anyway because of the reasons specified in the certificate.

The Subcommittee notes that a section 6A certificate was issued for the Regulations that confirms the above took place.

The Attorney-General's guidelines provide a range within which infringement penalties should be set. Infringement penalties should be set by reference to the maximum penalty that could be imposed by a court. An infringement fine should be no more than 25 per cent of the statutory maximum penalty for the offence.

Additionally, the guidelines state that the penalty should "not be too lenient". They provide that generally an infringement penalty should not be less than 10 per cent of the maximum penalty a court could impose if the person was prosecuted.

Five of the seven infringement penalties in the Regulations are less than 10 per cent of the maximum penalty a court could impose. The relevant offence provisions of the Act are section 19(4), 19B(3), 19B(4), 19B(5), and 26(1). The percentages infringement penalties are of the maximum penalties range from 4.2 to 8.3 per cent.

This contradicts the certificate issued under section 6A, which states that the Minister is satisfied that the Regulations meet the requirements of the Attorney-General's Guidelines.

To comply with the SLA and the Attorney-General's guidelines, the Regulations should either:

- retain the existing penalties, but have a section 6A certificate that states that the statutory rule does not meet the requirements of the guidelines but should be made anyway, along with an explanation for making regulations that do not meet the guidelines, or
- be amended to have penalties that fit within the 10 to 25 per cent range contained in the Attorney-General's guidelines.

The Subcommittee requests an explanation of why several of the infringement offences in the Regulations do not comply with the penalty range set out in the Attorney-General's Guidelines to the *Infringement Penalties Act 2006*: For Legislating Agencies.

Response

The Subcommittee would appreciate your response no later than Thursday, 26 September 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Tim Pallas MP

Treasurer of Victoria
Minister for Economic Growth
Minister for Industrial Relations

1 Treasury Place
GPO Box 4379
Melbourne Victoria 3001
Telephone: +61 3 7005 9474

D24/226413

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
MELBOURNE VIC 3000

By email: SARC@parliament.vic.gov.au

Dear Mr Maas

SR NO. 33 – CHILD EMPLOYMENT REGULATIONS 2024

Thank you for your correspondence dated 11 September 2024 regarding the requirements under the *Subordinate Legislation Act 1994* and their application to the Child Employment Regulations (Regulations).

Consultation

In 2021/22, the child employment regulatory framework underwent a substantial review, which resulted in amendments to the *Child Employment Act 2003* (CE Act). As part of that review, an extensive consultation process was undertaken with key stakeholders and industry participants. Because of this recent engagement and the limited nature of the Regulations themselves, it was decided to undertake targeted consultations with respect to the Regulations and the proposed amendments. These targeted consultations involved the preparation of a discussion paper (attached) which was sent directly to stakeholders in May 2023 inviting feedback, written submissions or an opportunity for a face to face meeting. The stakeholders identified as part of this targeted consultation were those with a known interest in the employment of children under the age of 15. They included:

- Employer groups
- Unions
- Peak bodies
- Other regulators and relevant government departments
- Entertainment industry
- Community groups and community legal centres
- Education bodies
- Religious organisations or those with an interest in child protection.



Industrial Relations Victoria (IRV) also worked closely with the Wage Inspectorate Victoria (Wage Inspectorate), who are responsible for administering the child employment regulatory regime, in the preparation of the consultation paper and proposed amendments to the Regulations.

IRV received four written submissions from the following organisations:

- Young Workers Centre
- Shop, Distributive & Allied Employees' Association (SDA) -the union for workers in retail, fast food and warehousing)
- WorkSafe Victoria
- Uniting Church in Australia.

The submissions indicated broad support for the proposed amendments to the Regulations, including the addition of new infringement offences.

IRV also gave a presentation to the Entertainment Industry Working Group which meets quarterly to discuss issues around children working in the sector. Feedback was invited from working group members, however, most indicated that they would prefer to participate in consultation on amendments to the Mandatory Code (which applies to their industry) rather than the regulations which have less of an impact on their work.

Infringement penalties

The decision to include infringement offences as part of the child employment regulatory framework was primarily a result of the review of the CE Act undertaken in 2021/22. Prior to the amendments to the CE Act in 2022, the Wage Inspectorate had very limited tools to address non-compliance with child employment laws. At that time, criminal prosecution in the Magistrates Court was the only option. The review of the CE Act also included a research project which identified non-compliance and awareness of the regulatory regime as a key issue for industries outside the entertainment sector. Many employers outside the entertainment industry erroneously believed that children could be employed from 14 years and 9 months and were unaware of the requirement for a permit/licence to engage children under 15 years or the legislative protections.

In establishing the infringement regime, it was necessary to balance the ability to address non-compliance with child employment laws with the need to increase understanding and awareness of the laws themselves. In this context, it was considered important that the new compliance and enforcement powers were not too high in circumstances where previously there had been no penalties or financial implications for non-compliance.

Infringeable offences are strict liability offences, therefore, lack of awareness or understanding of the law is generally not a defence. The infringement offences in the CE Act are largely either failure to notify offences or offences where the parent or guardian of the child is liable. The current value of a penalty unit is \$197.59 which puts the amount of an infringement for an offence of 5 penalty units at **\$987.95**. Whilst it is one penalty unit short of 10% of the CE Act penalty, it is still a high financial consequence considering the nature of the offences, namely notification failures and offences committed by parents/guardians, and within a scheme which previously did not have any fines. In particular, it is considered that financial penalties of almost \$1000 for parents/guardians is a significant amount despite being just under the 10% threshold. It should be noted that all but one of the infringement offences relate to individuals not bodies corporate.

IRV would be happy to send you a revised section 6A certificate setting out its consideration of the Attorney-General's Guidelines to this effect.

IRV also considered comparable infringement schemes administered by the Wage Inspectorate, such as the owner drivers and forestry contractors legislation, which includes infringements of 5 penalty units for bodies corporate and 1 penalty unit for individuals.

IRV worked extensively over more than six months with the Department of Justice and Community Safety (DJCS) on the child employment infringement regime and was guided by their advice in setting the penalties in the context of the relevant guidelines.

I hope this information is of assistance and please do not hesitate to contact IRV if you require any further details.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'T.P. 11.8', is written over a light blue circular stamp.

Tim Pallas MP
Minister for Industrial Relations

19/10/2024

Encl: Child Employment Regulations - Consultation Paper



Scrutiny of Acts and Regulations Committee

11 September 2024

The Hon. Gabrielle Williams
Minister for Government Services
Level 3
1 Treasury Place
East Melbourne
Victoria, 3002

By email: minister.williams@dgs.vic.gov.au

Dear Minister,

Service Victoria Identity Verification Standards

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above legislative instrument at a meeting on 9 September 2024.

The Subcommittee resolved to seek further information about two matters.

The legislative instrument

The Service Victoria Identity Verification Standards are a legislative instrument that establish a consistent and secure identity framework for individuals transacting with the Victorian government through Service Victoria.

The current version of the Service Victoria Identity Verification Standards (the LI) replaces and remakes the 2023 version. The replacement was needed to implement some changes to the LI's empowering legislation, the *Service Victoria Act 2018* (the Act), made by the *Service Victoria Amendment Act 2024* (the Amendment Act).

The Amendment Act re-located procedural requirements for issuing, suspending, and cancelling electronic identity credentials from the Act to a legislative instrument. The LI is the legislative instrument that contains the re-located requirements.

Timeliness of publishing in the Gazette and sending material to the Committee

The *Subordinate Legislation Act 1994* (the SLA) requires the following timeframes to be complied with when making a legislative instrument:

- the LI must be published in the next general edition of Government Gazette or in a special edition of the Government Gazette within 10 working days of its making (section 16A)
- the required instrument must be sent to the Committee within 10 working days of its making (section 16C).

The LI was made on 14 May 2024. However, it was published in a special edition of the Government Gazette and sent with accompanying documentation to the Committee on 29 May 2024. The Subcommittee notes that these happened 11 working days after the LI was made.

Material sent to the Committee

Section 16C(3) of the SLA provides that failure to provide the material to the Committee does not affect the operation or effect of the statutory rule. However, the Subcommittee notes that timeliness in sending material to the Committee is important to allow the Committee (via delegation to the Subcommittee) to discharge its scrutiny function.

Publication in the Gazette

It is not clear whether late publishing in the Gazette will affect the operation of the LI. Section 16A is silent on whether failure to comply with the section will affect the LI's operation. This compares to sections 12, 12J, 15, 15A, 16B, 16C, and 16F the SLA. These sections specifically provide that failure to comply with the relevant section does not affect the operation of the relevant statutory rule or legislative instrument.

The Subcommittee is concerned that failure to comply with section 16A, due to the late publishing of the LI in the Gazette, may affect the operation of the LI.

Consultation against the base case

The LI is accompanied by a section 12C consultation certificate. The certificate states that consultation was undertaken with:

- every Minister whose area of responsibility may be affected by the proposed legislative instrument
- Service Victoria's Policy Working Group, which includes Service Victoria's partner agencies.

The certificate states that there are no sectors of the public on which a significant economic or social burden may be imposed by the LI.

The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) set out consultation requirements for statutory rules and legislative instruments. The Guidelines state that, for statutory rules exempt from a Regulatory Impact Statement under section 8(1)(a), initial consultation should be undertaken to

enable the Minister to obtain sufficient evidence to determine whether the statutory rule imposes a significant burden. The Guidelines state that section 12F(1)(a) mirrors section 8(1)(a). Accordingly, the requirements for statutory rules exempt from a RIS because they do not impose a significant burden to sectors of the public apply to legislative instruments exempt for the same reason.

It is not clear from the consultation certificate whether sufficient consultation was undertaken for the Minister to determine there was no economic or social burden on the public. This is because:

- the certificate states that consultation with Service Victoria's Policy Working Group but does not state what agencies are included in this group.
- the consultation certificate issued for the previous IDVS contained additional stakeholders who were consulted that are not included in the current consultation certificate. This includes: the Office of the Victorian Information Commissioner, the Health Complaints Commissioner, and Better Regulation Victoria.
- The certificate does not state how the Minister formed the view that a significant economic or social burden would not be imposed on a sector of the public.

On this basis, the Subcommittee requests more detail about who was consulted in making the LI. It also requests information about how consultation was used to determine that the LI would not have a significant economic or social burden on a sector of the public.

Response

The Subcommittee would appreciate your response no later than Thursday, 26 September 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Gabrielle Williams MP

Minister for Government Services
Minister for Consumer Affairs
Minister for Public and Active Transport

Level 3, 1 Treasury Place
Melbourne, Victoria 3002
Telephone +613 9096 8587

Mr Gary Maas MP
Chair, Scrutiny of Acts and Regulations
Committee
By email: sarc@parliament.vic.gov.au

CIP240916

Dear Chair

SERVICE VICTORIA IDENTITY VERIFICATION STANDARDS

Thank you for your letter dated 11 September 2024 about the Service Victoria Identity Verification Standards (the Standards) and request for additional information. Please see responses to the concerns raised below.

Timeliness of publishing in the Gazette and sending material to the Committee

I acknowledge the delay in providing the Standards to the Scrutiny of Acts and Regulations Committee (the Committee) in accordance with section 16C of the *Subordinate Legislation Act 1994* (the SLA).

Changes to the Standards were consequential to the *Service Victoria Amendment Act 2024*. Publication of the Standards prior to the commencement of the amending legislation would have led to an inconsistency between the Standards and the *Service Victoria Act 2018*. Governor-in-Council approval for commencement of the amending legislation and associated regulations occurred on 28 May 2024. It was therefore necessary that the Standards were not published ahead of the suite of documents for the whole reform package, which occurred on 29 May 2024. This resulted in a one-day delay for the publication of the Standards.

The Standards were published as required by section 16A(1) of the *Subordinate Legislation Act 1994* and are publicly available, consistent with validity requirements of that Act. Although the publication was delayed, the commencement and operation of the Standards occurred only upon publication. The Department of Government Services considers that the delay in publication does not impact the validity of the Standards.

Consultation against the base case

The Department undertook broad consultation to determine that the Standards do not impose a significant burden. The Standards do not impose any additional substantive requirements on the public and merely contain existing procedural requirements that had previously been located in the *Service Victoria Act 2018*.

The Department of Government Services consulted the following departments and agencies through the Service Victoria Policy Working Group to support this finding:

- Ambulance Victoria
- Births, Deaths and Marriages

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



OFFICIAL: Sensitive

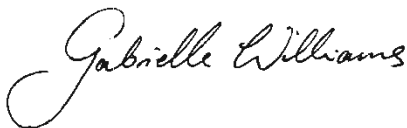
- Consumer Affairs Victoria
- Department of Education
- Department of Energy Environment and Climate Action
- Department of Families, Fairness and Housing
- Department of Government Services (Digital policy)
- Department of Health
- Department of Jobs, Skills, Industry and Regions
- Department of Justice and Community Safety
- Department of Premier and Cabinet
- Department of Transport and Planning
- Department of Treasury and Finance
- Earth Resources Regulator
- Game Management Authority
- Labour Hire Licensing Authority
- Residential Tenancies Bond Authority
- Safe Transport Victoria
- Solar Victoria
- State Revenue Office
- VicRoads
- Victoria Police
- Victorian Building Authority
- Victorian Disability Worker Commission
- Victorian Fisheries Authority
- Working with Children Check Victoria
- WorkSafe Victoria

Consultation on changes to the Standards was in addition to consultation for the *Service Victoria Amendment Act 2024* which incorporated the broader policy proposal to shift procedural requirements from the *Service Victoria Act 2018* into the Standards. This involved consultation with the Office of the Victorian Information Commissioner, the Health Complaints Commissioner, and Better Regulation Victoria, as well as privacy stakeholders including the Law Institute of Victoria, the Australian Privacy Foundation and Electronic Frontiers Australia.

To address the matters raised and ensure transparency, the Department of Government Services will implement your feedback to include a more detailed consultation certificate going forward.

Thank you again for bringing these matters to my attention. If you have any further queries, please contact Cassandra Meagher, Executive Director Credentials and Identity Policy at cassandra.meagher@service.vic.gov.au.

Sincerely,



Gabrielle Williams MP
Minister for Government Services
Minister for Consumer Affairs
Minister for Public and Active Transport

26 / 09 / 2024





Scrutiny of Acts and Regulations Committee

16 October 2024

The Hon. Danny Pearson
Minister for WorkSafe and the TAC
Level 20
1 Spring Street
Melbourne
Victoria, 3000

By email: danny.pearson@parliament.vic.gov.au

Dear Minister

SR No. 35 – Workplace Injury Rehabilitation and Compensation Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 14 October 2024.

The Subcommittee resolved to raise one matter with you about the Workplace Injury Rehabilitation and Compensation Regulations 2024 (the Regulations).

Workplace Injury Rehabilitation and Compensation Regulations 2024

The Regulations were made under section 620 of the *Workplace Injury Rehabilitation and Compensation Act 2013* on 21 May 2024. The Regulations prescribe certain matters to support the functioning of the WorkCover scheme.

The Regulations revoked and replaced the Workplace Injury Rehabilitation and Compensation Regulations 2014, making four main changes:

- updating the percentage amounts payable to contractors which are deemed not to be remuneration in certain circumstances
- moving the statement of identity and medical certificate forms for injured workers that live overseas out of regulations and onto WorkSafe's website
- simplifying the formula for determining self-insurer contributions, including calculating the amount contributed annually instead of quarterly

- amending the formula for self-insurer contributions to remove the 40 per cent discount element.

Adequacy of section 11 notice

The Regulations were accompanied by a regulatory impact statement (RIS). The RIS appears to adequately address the requirements of the *Subordinate Legislation Act 1994* (the SLA). However, there is an issue with the contents of the section 11 notice prepared for the Regulations.

Section 11 of the SLA provides that, if an RIS has been prepared, the responsible Minister must ensure that a notice of preparation is published in the Government Gazette and a daily newspaper circulating generally throughout Victoria.¹

Section 11(2) sets out the requirements for what must be contained in the notice:

- (2) A notice must —
- state the reason for, and the objectives of, the proposed statutory rule;
 - summarise the results of the regulatory impact statement;
 - specify where a copy of the regulatory impact statement and of the proposed statutory rule can be obtained; and
 - invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.

The relevant section 11 notice was published in the Government Gazette and on the Victorian Public Notices website on 15 January 2024. The Gazette notice contains all aspects required in section 11(2).

However, the notice published on the Victorian Public Notices website does not fulfil all the requirements in section 11(2). It does not state the reason for, and the objectives of, the proposed statutory rule (paragraph (a)) or summarise the results of the regulatory impact statement (paragraph (b)).

The lack of detail in the notice required by section 11(2)(a) and (b) means that the Regulations do not comply with the SLA. Under section 21(1)(j) of the SLA, the Committee may report to Parliament if a statutory rule has been prepared in contravention of any of the provisions of the SLA or of the guidelines with

¹ Under section 38M of the *Interpretation of Legislation Act 1984* and the [Subordinate Legislation Act 1994 Guidelines](#) at para [184], publishing a notice on the Victorian Public Notices website is considered to meet the requirement of publishing a notice in a daily newspaper circulating generally throughout Victoria.

respect to the statutory rule and the contravention is of a substantial or material nature.

The Subcommittee does not consider that this contravention is of substantial or material nature. In assessing whether a substantial or material breach of the SLA has occurred, consideration may be given to the impact of non-compliance and the impact of the invalidity.² The possible impact of non-compliance is that the public does not know by reading the notice the reasons and objectives of the statutory rule or the results of the RIS.

However, in this case a notice requesting public comment was published on the Public Notices website with some details about the RIS. Moreover, the reasons for and objectives of the proposed statutory rule were contained in the RIS, which was readily available. The same is true for the results of the RIS. Additionally, the notice published in the Government Gazette meets all the requirements in section 11(2).

On those bases, the Subcommittee considers that the effect of the non-compliance is minimal, and the contravention of the SLA is not substantial or material in nature. The Subcommittee does not intend to report to Parliament on this matter.

However, it is important that all statutory rules and accompanying documentation comply with all provisions of the SLA. The Subcommittee suggests that you request that WorkSafe establish or review processes to ensure that all future section 11 notices comply with section 11(2) of the SLA.

Response

The Subcommittee would appreciate your response no later than Tuesday, 29 October 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² James J Spiegelman, 'Statutory Obligations and Discretions' in Belinda Smith et. al. *Laying Down the Law, 12th edition* (2023) p. 17.



The Hon. Danny Pearson MP

Assistant Treasurer
Minister for Transport Infrastructure
Minister for the Suburban Rail Loop
Minister for WorkSafe and the TAC

Level 20, 1 Spring Street
Melbourne Victoria 3000
Telephone: +61 3 9658 4101

Mr Gary Maas MP
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

By email: sarc@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 16 October 2024 relating to the contents of the section 11 notice prepared for the Regulations and the requirements of the *Subordinate Legislation Act 1994* (the SLA).

I acknowledge your comments on the adequacy of the section 11 notice and the Subcommittee's findings. When publishing a public notice under s11(1)(b) of the SLA, WorkSafe endeavours to communicate in a way that drives engagement with the notice and ultimately, the Regulatory Impact Statement. WorkSafe has acknowledged to me that in an attempt to communicate concisely, some of the detail required by s11(2) was inadvertently omitted.

I can confirm that WorkSafe will review and revise their drafting processes and instructions to ensure that all future statutory rules and accompanying documentation, including section 11 notices, explicitly spell out and comply with all provisions of the SLA.

Should the Subcommittee wish to discuss this matter further, please contact Emma Stephens, Director, Legislation, Policy and Information Services at WorkSafe via email at: emma_stephens@worksafe.vic.gov.au

I hope this information has been helpful to you and the Subcommittee and thank you again for taking the time to write to me about this matter.

Yours sincerely

Hon Danny Pearson MP
Minister for WorkSafe and the TAC

29 / 10 / 2024

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department, please contact our Privacy Officer at the above address.





Scrutiny of Acts and Regulations Committee

16 October 2024

The Hon. Jaclyn Symes
Attorney-General
Level 26
121 Exhibition Street
Melbourne
Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 37 – Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 14 October 2024.

The Subcommittee resolved to raise one matter with you about the Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024 (the Regulations).

Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024

The Regulations were made under sections 5A and 28 of the *Subordinate Legislation Act 1994* (the SLA) on 28 May 2024.

The Regulations extend the operation of the Freedom of Information (Access Charges) Regulations 2014 for 12 months until 2 June 2025. The extension was granted to give the Government time to consider recommendations from the Integrity and Oversight Committee's inquiry into the operation of the *Freedom of Information Act 1982*.

Information required in section 8 exemption certificate

The Regulations are accompanied by a section 8 exemption certificate. The certificate exempts the Regulations from being accompanied by a regulatory impact statement under section 8(1)(e)(iii) of the SLA on the basis that the statutory rule is an exemption regulation.

Scrutiny of Acts and Regulations Committee, Parliament of Victoria
+61 3 8682 2836 | sarc@parliament.vic.gov.au | www.parliament.vic.gov.au/sarc
Parliament House, Spring Street, East Melbourne Victoria 3002, Australia

1

The certificate issued for the Regulations complies with the requirements in section 8 of the SLA. However, the certificate does not comply with the [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines).

The Guidelines set out what should be included in a section 8 exemption certificate. They require an exemption certificate to include the relevant paragraph of section 8(1) under which the exemption is made.

The exemption certificate for the Regulations states that the Regulations are exempt under section 8(1) of the SLA. The Subcommittee notes that certificate does not state which paragraph the exemption is made under (that is, paragraph (e)), as required by the Guidelines.

The Subcommittee requests that future exemption certificates for statutory rules and legislative instruments contain the information required by the Guidelines.

Response

The Subcommittee would appreciate your response no later than Tuesday, 29 October 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Jaclyn Symes MP

Attorney-General
Minister for Emergency Services

121 Exhibition Street
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 24103554

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

By email: sarc@parliament.vic.gov.au

Dear Chair

Thank you for your letter of 16 October 2024 regarding the Subordinate Legislation (Freedom of Information (Access Charges) Regulations 2014) Extension Regulations 2024.

I thank the Committee for its review of the Regulations and associated certificates and for drawing my attention to the need for future exemption certificates for statutory rules and legislative instruments to state the paragraph the exemption is made under.

Yours sincerely

A handwritten signature in blue ink that reads "Jaclyn Symes".

Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

14/11/2024





Scrutiny of Acts and Regulations Committee

16 October 2024

The Hon. Steve Dimopoulos
Minister for Environment
Level 16
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: reception.dimopoulos@deeca.vic.gov.au

Dear Minister

SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 14 October 2024.

The Subcommittee resolved to raise one matter with you about the Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024 (the Regulations).

[Subordinate Legislation \(Forests \(Fire Protection\) Regulations 2014\) Extension Regulations 2024](#)

The Regulations were made under sections 5A and 28 of the *Subordinate Legislation Act 1994* (the SLA) on 4 June 2024.

The Regulations extend the operation of the Forests (Fire Protection) Regulations 2014 for 12 months until 8 June 2025. The extension is granted to allow two projects to be completed that may affect the policy expressed in the Regulations.

[Timeliness in providing material to the Committee](#)

When a statutory rule is made, section 15A of the SLA requires the responsible Minister to provide specified documentation to the Committee. Subsection (2) requires these documents to be sent to the Committee no later than 10 working days after the statutory rule is made.

The documentation accompanying the Regulations was received by the Committee on 5 July 2024. This is 22 working days after the Regulations were made, i.e. 12 working days after the statutory deadline.

Under section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending material to the Committee is important to allow the Committee (via delegation to the Subcommittee) to discharge its scrutiny function. Failure to provide documentation within the timeframe undermines the Subcommittee's ability to consider regulations within the disallowance timeframe.

The Subcommittee wishes to reiterate the importance in providing material accompanying regulations to the Committee within 10 working days, as required by section 15A of the SLA.

Response

The Subcommittee would appreciate your response no later than Tuesday, 29 October 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
East Melbourne VIC 8002

MIN-241004356

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Chair

SR No. 40 – Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024

Thank you for your letter of 16 October 2024 regarding the delay in providing the Scrutiny of Acts and Regulations Committee (SARC) with documentation relating to the Subordinate Legislation (Forests (Fire Protection) Regulations 2014) Extension Regulations 2024. I apologise for the delay in responding.

I acknowledge that documentation accompanying a statutory rule made under section 15A of the *Subordinate Legislation Act 1994* (SLA) requires the responsible Minister to provide accompanying documents to SARC no later than 10 working days after the statutory rule is made.

It is not my or the Department of Energy, Environment and Climate Action's (DEECA) intention to impact SARC's ability to fulfill its functions with respect to the Regulations. I apologise for the late provision of documents in contravention of the Act.

I have raised this matter with the relevant area of DEECA and understand that the delay was due to a misreading of the statutory process. I have asked DEECA to ensure that relevant staff are familiar with the statutory process so that similar delays do not occur in the future.

If the Committee has any further questions, please contact Ms Jess Chandler, A/Director Fire and Emergency Management Policy, DEECA via email at jess.chandler@deeca.vic.gov.au.

Thank you, once again, for raising this important matter with me.

Yours sincerely

Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

7/12/24



Official



Scrutiny of Acts and Regulations Committee

16 October 2024

The Hon. Anthony Carbines
Minister for Police
Level 26
121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.carbines@justice.vic.gov.au

Dear Minister

SR No. 42 – Victoria Police Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 14 October 2024.

The Subcommittee resolved to raise one matter with you about the Victoria Police Regulations 2024 (the Regulations).

[Victoria Police Regulations 2024](#)

The Regulations were made under section 277 of the *Victoria Police Act 2013* (the Act) on 4 June 2024. The Regulations repeal and remake the Victoria Police Regulations 2014, which were due to sunset on 24 June 2024.

The Regulations prescribe specified matters under the Act, such as:

- matters necessary for the appointment, promotion and transfer of police officers and protective service officers
- matters for appeals and reviews under Part 8 of the Act
- matters necessary for the testing of Victoria Police personnel for alcohol and drugs of dependence
- designated places at which protective service officers may exercise all the powers and responsibilities granted or imposed by section 52(2) of the Act
- other matters necessary for the purposes of the Act.

Lodging incorporated documents with the Clerk of the Parliaments

Incorporating material by reference is when legislation gives legal effect to provisions set out in a separate document, without repeating the provisions or content in the text of the legislation itself.

Section 277(2) of the Act provides that regulations made under the Act may incorporate material by reference. The Regulations incorporate two documents:

- Australian/New Zealand Standard AS/NZS 4308 Procedures for specimen and collection and the detection and quantification of drugs in urine, published jointly by, or on behalf of, Standards Australia and Standards New Zealand
- Australian/New Zealand Standard AS/NZS 4760 Procedure for specimen collection and the detection and quantification of drugs in oral fluid, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

Section 32 of the *Interpretation Act 1984* (the ILA) sets out the requirements for incorporating material by reference. Section 32(3)(a)(i) of the ILA requires the Minister to cause a copy of an incorporated document to be lodged with the Clerk of the Parliaments as soon as practicable after the statutory rule must be tabled in Parliament. The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) restate this requirement.

After a document has been lodged, the following must occur:

- a notice of the lodgement must be published in the Government Gazette
- a copy of the notice in the Government Gazette must be tabled in both Houses
- a copy of the material incorporated must be made available for inspection during normal office hours by members of the public without charge.

The Subcommittee notes that neither document incorporated into the Regulations has been lodged with the Clerk of the Parliaments. As such, the subsequent steps regarding publishing and making the document available have also not occurred.

The Subcommittee considers it important that documents incorporated into legislation are made available to Parliament and to members of the public. It is a fundamental principle of the rule of law that every person subject to the law should be able to access it.

The Guidelines note that failure to fulfil lodging requirements could lead to problems with enforcement. Additionally, unless all relevant material is tabled, the statutory rule does not apply, adopt, or incorporate the material effectively.

The Committee's functions, delegated to the Subcommittee, include determining whether subordinate legislation contravenes the *Subordinate Legislation Act 1994* (SLA) or the Guidelines. The incorporated documents not being lodged with the Clerk of the Parliaments puts the Regulations in contravention of the ILA and the Guidelines.

The Subcommittee requests an explanation as to why the incorporated documents were not lodged with the Clerk of the Parliaments as soon as practicable after the Regulations were required to be tabled. The Subcommittee also requests that the documents be lodged with the Clerk as soon as practicable.

Response

The Subcommittee would appreciate your response no later than Friday, 25 October 2024. This will give the Subcommittee the time to consider the response before the time period for disallowance of the Regulations ends.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Hon Anthony Carbines MP

Minister for Police
Minister for Crime Prevention
Minister for Racing

121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 9136 2888

Our ref: 24103619

Gary Maas MP
Chair, Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By email: SARC@parliament.vic.gov.au

Dear Mr Maas

VICTORIA POLICE REGULATIONS 2024

I refer to your letter dated 16 October 2024 regarding the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee's consideration of the Victoria Police Regulations 2024. I appreciate you bringing this matter to my attention.

I note the incorporated documents were not lodged with the Clerks of the Parliament as required due to a departmental oversight. I confirm that the responsible officer in the Department of Justice and Community Safety lodged the following documents with the Clerk of Parliaments on 17 October 2024:

- Australian/New Zealand Standard AS/NZS 4308 Procedures for specimen and collection and the detection and quantification of drugs in urine, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.
- Australian/New Zealand Standard AS/NZS 4760 Procedure for specimen collection and the detection and quantification of drugs in oral fluid, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

Yours sincerely

Hon Anthony Carbines MP
Minister for Police
Minister for Crime Prevention
Minister for Racing

29/10/24





Scrutiny of Acts and Regulations Committee

16 October 2024

The Hon. Harriet Shing
Minister for Water
Level 16
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: harriet.shing@minstaff.vic.gov.au

Dear Minister

SR No. 44 – Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 14 October 2024.

The Subcommittee resolved to raise one matter with you about the Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024 (the Regulations).

[Water \(Lake Eildon Recreational Area\) \(Houseboats\) Regulations 2024](#)

The Regulations were made under section 324 of the *Water Act 1989* on 4 June 2024. The Regulations revoke and replace the 2013 Regulations to provide for the control and management of houseboats in the Lake Eildon recreational area. This includes providing for:

- licensing for houseboats
- management of blackwater and greywater (including penalties for non-compliance).

[Adequacy of section 11 notice](#)

The Regulations were accompanied by a regulatory impact statement (RIS). The RIS appears to adequately address the requirements of the *Subordinate Legislation Act 1994* (the SLA). However, there is an issue with the contents of the section 11 notice prepared for the Regulations.

Section 11 of the SLA provides that, if an RIS has been prepared, the responsible Minister must ensure that a notice of preparation is published in the Government Gazette and a daily newspaper circulating generally throughout Victoria.¹

Section 11(2) sets out the requirements for what must be contained in the notice (**emphasis added**):

- (2) A notice must —
- (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the regulatory impact statement;
 - (c) specify where a copy of the regulatory impact statement and of the proposed statutory rule can be obtained; and
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.**

A notice of preparation of the RIS for the Regulations was advertised in the Public Notices website and the Victorian Government Gazette and on 11 and 12 April 2024 respectively. The notices invited public comment between the date of publication and 9 May 2024.

The notice on the Public Notices website complies with section 11(2)(d). It invites public comments from the date it is published (11 April) until 9 May 2024. This is the minimum 28 days required by section 11(2)(d).

The notice in the Victorian Government Gazette does not comply with section 11(2)(d). It invites public comments from the date it is published (12 April) until 9 May 2024. This is 27 days; one day less than that required by section 11(2)(d).

The lack of compliance with section 11(2)(d) means that the Regulations contravene the SLA. Under section 21(1)(j) of the SLA, the Committee may report to Parliament if a statutory rule has been prepared in contravention of any of the provisions of the SLA or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature.

At its meeting, the Subcommittee considered whether the contravention of section 11(2)(d) was of a substantial or material nature in this case. In its

¹ Under section 38M of the *Interpretation of Legislation Act 1984* and the [Subordinate Legislation Act 1994 Guidelines](#) at para [184], publishing a notice on the Victorian Public Notices website is considered to meet the requirement of publishing a notice in a daily newspaper circulating generally throughout Victoria.

deliberation, the Subcommittee considered other steps taken to advertise the making of the RIS. The Subcommittee notes that:

- the Public Notices website notice was published in time to give the public 28 days to submit on the RIS
- the Engage Victoria page, which was the forum for making submissions, appears to have been published from 11 April, giving 28 days for the public to make submissions
- other communication and engagement activities were undertaken to promote consultation, including a webinar, posters, FAQs, fact sheets, email bulletin series, radio interview, and social media posts.

On those bases, the Subcommittee does not consider the breach of section 11(2)(d) to be substantial or material in nature. The Subcommittee does not intend to report to Parliament on this matter.

However, it is important that all statutory rules and accompanying documentation comply with all provisions of the SLA. The Subcommittee suggests that you request that the Department of Energy, Environment and Climate Action establish or review processes to ensure that all future section 11 notices comply with section 11(2) of the SLA.

Response

The Subcommittee would appreciate your response no later than Tuesday, 29 October 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Hon Harriet Shing MP

Minister for Housing
Minister for Water
Minister for Equality

8 Nicholson Street
East Melbourne, Victoria 3002

MIN-241004453

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Mr Maas

Gary
SR NO. 44 - WATER (LAKE EILDON RECREATIONAL AREA) (HOUSEBOATS) REGULATIONS 2024

Thank you for your letter dated 16 October 2024, bringing to my attention the issue the Scrutiny of Acts and Regulations Committee identified with the contents of the notice prepared under section 11 of the *Subordinate Legislation Act 1994* (SLA), for the Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2024.

I note and acknowledge that the requirements in section 11(2)(d) of SLA were not complied with in relation to the notice in the *Victoria Government Gazette*.

The failure to comply with section 11(2)(d) of the SLA was unintentional and due to an administrative oversight. I recognise the importance of ensuring that all statutory rules and accompanying documentation comply with all provisions of the SLA.


I note your decision not to report to Parliament on this matter in recognition that you do not consider the breach to be substantial or material in nature.

The Department of Energy, Environment and Climate Action (DEECA) has reviewed its internal processes and identified where guidance documents can be updated to improve clarity on notice publication requirements when developing statutory rules with a Regulatory Impact Statement, to ensure full compliance with section 11(2) of the SLA in the future. I also understand that the necessary updates have been made.

If you have further questions, please contact Mike Jenz, Director, Rural Water Policy and Programs, DEECA on 0477 270 059 or at michael.jenz@deeca.vic.gov.au.

Thank you once again for raising this important matter with me.

Yours sincerely


Hon Harriet Shing MP
Minister for Water
28/10/24



Official



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Jaclyn Symes
Minister for Emergency Services
Level 26, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Minister

SR No. 49 – Country Fire Authority (Community Fire Refuge) Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 4 November 2024.

The Subcommittee resolved to raise two matters with you about the Country Fire Authority (Community Fire Refuge) Regulations 2024 (the Regulations).

Country Fire Authority (Community Fire Refuge) Regulations 2024

The Regulations were made under section 110 of the *Country Fire Authority Act 1958* on 18 June 2024. The Regulations revoke and replace the Country Fire Authority (Community Fire Refuge) Regulations 2014 (the 2014 Regulations).

The Regulations prescribe five places to be community fire refuges for the purpose of Part IIIA of the Act.

Incorrect exemption category

The *Subordinate Legislation Act 1994* (the SLA) requires Ministers to ensure a regulatory impact statement is prepared to accompany a statutory rule. This is unless an exemption under section 8 of the SLA applies. Section 8 provides different categories of exemptions.

The Regulations are accompanied by an exemption certificate issued under section 8(1)(a) of the Regulations. Exemptions under section 8(1)(a) are on the basis that the statutory rule would not impose a significant economic or social burden on a sector of the public.

The Subcommittee considers that the Regulations may have been exempt under the incorrect exemption category under section 8(1). The Regulations are accompanied by a section 12B composite certificate that fulfils the requirements in section 8. The certificate states that the Regulations are exempt from the requirement to prepare a regulatory impact statement under section 8(1)(a) on the basis that the Regulations do not impose a significant economic or social burden.

The reason for the exemption under section 8(1)(a), as stated in the certificate, is “the proposed Regulations are of a fundamentally declaratory or machinery nature”. Rather than a reason for an exemption under section 8(1)(a), this appears to be the wording of an exemption under section 8(1)(c). Section 8(1)(c) provides that regulations may be exempt from the regulatory impact statement process if “the proposed statutory rule is of a fundamentally declaratory or machinery nature.” The suggestion that the correct exemption category is section 8(1)(c) is further supported by the fact the 2014 Regulations were exempt under that category.

The Subcommittee draws your attention to the [Committee Practice Note](#), which is developed to assist government departments comply with their obligations under the SLA. The Committee Practice Note notes the importance of using the appropriate exemption category when exempting regulations from the regulatory impact statement process.

Timeliness in providing material to the Committee

When a statutory rule is made, section 15A of the SLA requires the responsible Minister to provide specified documentation to the Committee. Subsection (2) requires these documents to be sent to the Committee no later than 10 working days after the statutory rule is made.

The Regulations were made on 18 June 2024. The Regulations and accompanying documentation were received by the Subcommittee on 4 July 2024. This is 12 working days after the Regulations were made.

Under section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Jaclyn Symes MP

Attorney-General
Minister for Emergency Services

121 Exhibition Street
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 24110813

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

By email: SARC@parliament.vic.gov.au

Dear Mr Maas

Thank you for your correspondence of 6 November 2024 regarding the Country Fire Authority (Community Fire Refuge) Regulations 2024 (the Regulations).

Regarding the exemption category specified in the exemption certificate, I confirm that the Regulations do not impose a significant economic or social burden on a sector of the public, in accordance with section 8(1)(a) of the *Subordinate Legislation Act 1994* (SLA).

However, I appreciate the Committee's advice that a more appropriate exemption category may have been that the Regulations are fundamentally declaratory or machinery nature, in accordance with section 8(1)(c) of the SLA. I also note the Committees' advice, that this was the exemption category referenced when the Country Fire Authority (Community Fire Refuge) Regulations 2014 were previously made. I appreciate the Committees' diligence in identifying this discrepancy and bringing it to my attention. I have asked that my department review the Committee Practice Note to assist with compliance with the requirements imposed under the SLA in future.

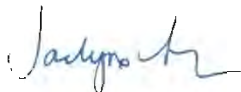
Additionally, I apologise for the delay in providing the required documentation to the Committee. I have reiterated to my department the importance of ensuring compliance with these timeframes to facilitate effective parliamentary oversight of subordinate legislation.



Should you require further information, please contact David Clavarino, Director, Strategy and Policy at Emergency Management Victoria by email at david.clavarino@emv.vic.gov.au.

I trust this information has been of assistance to you and thank you again for taking the time to write about this matter.

Yours sincerely



Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

18 / 11 / 2024



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Sonya Kilkenny
Minister for Planning
Level 20, 1 Spring Street
Melbourne
Victoria, 3000

By email: reception.kilkenny@transport.vic.gov.au

SR No. 59 – Building Amendment (Fees and Other Matters) Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the Building Amendment (Fees and Other Matters) (the Regulations).

Building Amendment (Fees and Other Matters) Regulations 2024

The Regulations were made under sections 261 and 266 of the *Building Act 1993* on 25 June 2024. The Regulations amend several prescribed fees in the Building Act Regulations 2019. The fees relate to building permits and matters before the Building Appeals Board, Victorian Building Authority, and Building Regulations Advisory Committee.

Timeliness in providing material to the Committee

When a statutory rule is made, section 15A of the *Subordinate Legislation Act 1994* (the SLA) requires the responsible Minister to provide specified documentation to the Committee. Subsection (2) requires these documents to be sent to the Committee no later than 10 working days after the statutory rule is made.

The Regulations were made on 25 June 2024. The Regulations and accompanying documentation were received by the Subcommittee on 16 July 2024. This is 15 working days after the Regulations were made.

Under section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending

material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for the Suburbs

1 Spring Street
Melbourne, Victoria 3000 Australia

Ref: CMIN-1-24-6778

Hon Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
SARC@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 6 November 2024 regarding SR No 59 Building Amendment (Fees and Other Matters) Regulations 2024.

I apologise for the delay in providing the documents relevant to the making of the Regulations to the Committee. Additional time was needed by my Department to prepare material arising from consultation on the regulatory impact statement for the regulations.

Whilst all responses to the Engage Victoria Survey in respect of the RIS were assessed and considered prior to the making of the Regulations, the formal collation of the responses, the summary of submissions and responses and replies to each of the submitters took extra time, which led to a delay of several days to provide the documents to the Committee.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning
Minister for the Suburbs

Date: 21/11/2024





Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Jaclyn Symes
Minister for Emergency Services
Level 26, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 66 – Honorary Justices Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the Honorary Justices Regulations 2024 (the Regulations).

Honorary Justices Regulations 2024

The Regulations were made under section 49 of the *Honorary Justices Act 2014* on 2 July 2024. The Regulations revoke and replace the Honorary Justices Regulations 2014 (the 2014 Regulations) in substantially the same form.

The Regulations prescribe:

- oaths and affirmations to be taken by justices of the peace and bail justices
- training courses and professional development for honorary justices, justices of the peace, and bail justices
- office holders who are automatically bail justices
- a code of conduct for honorary justices.

Application of section 6 of the *Subordinate Legislation Act 1994*

The Regulations are accompanied by an explanatory memorandum that outlines the effect of the Regulations. The explanatory memorandum states:

“Formal consultation was not required under the Premier’s Guidelines issued under the Subordinate Legislation Act 1994 as the proposed Regulations would not impose a significant economic or social burden on a sector of the

public. As best practice, Victoria Police, honorary justices, the Royal Victorian Association of Honorary justices, and the youth justice portfolio within Department of Justice and Community Safety were consulted as part of the process to remake the proposed Regulations.”

The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) provide that initial consultation should be undertaken if regulations are exempt from preparing a regulatory impact statement under section 8(1)(a) of the *Subordinate Legislation Act 1994* (the SLA).¹ Initial consultation allows the Minister to gather evidence to determine whether the regulations impose a significant burden on a sector of the public.² Paragraph 91 of the Guidelines states that: “the responsible Minister must ensure that where these Guidelines require initial consultation, a certificate of consultation is issued.”³

The Regulations are exempt under section 8(1)(a). The explanatory memorandum, quoted above, shows that initial consultation occurred. However, no consultation certificate was issued in this case.

Section 15 of the SLA provides that failure to table, or provide the Subcommittee with, a section 6 consultation certificate does not affect the operation or effect of the Regulations.

The Subcommittee requests your advice on the application of section 6 of the SLA and the Guidelines to the Regulations.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines*, <<https://www.parliament.vic.gov.au/491876/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>> accessed 21 October 2024, p. 32.

² *Ibid.*

³ *Ibid.*, p. 24.



Jaclyn Symes MP

Attorney-General
Minister for Emergency Services

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Our ref: 24110678

Mr Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee
EAST MELBOURNE VIC 3002

Dear Mr Maas

Inquiry on SR No. 66 – Honorary Justice Regulations 2024

Thank you for your letter dated 6 November 2024 regarding the making of the Honorary Justice Regulations 2024 (Regulations).

The Scrutiny Acts and Regulations Committee has inquired on the absence of a consultation certificate per section 6 of the *Subordinate Legislation Act 1994*. I confirm that the omission of the section 6 certificate was an oversight and apologise for the omission.

The Regulations received an exemption to the preparation of a regulatory impact statement (RIS) under section 8(1)(a) of the *Subordinate Legislation Act 1994* as I was satisfied that the Regulations would not impose a significant economic or social burden on a sector of the public.

As noted in the Regulations' explanatory memorandum and referred to in your letter, consultation was undertaken as a matter of best practice. The consultation with Victoria Police, the honorary justice cohort, the Royal Victorian Association of Honorary Justices and the youth justice portfolio informed my view that an exemption under section 8(1)(a) was warranted.

In alignment with the information that is ordinarily provided in a section 6 certificate I confirm that:

- the consultation was undertaken in accordance with the Premier's Guidelines made under the *Subordinate Legislation Act 1994*, and the matters dealt with under the Honorary Justice Regulations 2024 do not impinge upon or unduly affect the area of responsibility of any other Minister, and there is no overlapping or duplication of, or



conflict with, the legislation, statutory rules or stated government policies administered by other agencies, and

- the need for, and scope of the proposed Honorary Justice Regulations 2024 have been considered and relevant sectors of the public have been consulted in accordance with the Premier's Guidelines made under the *Subordinate Legislation Act 1994*.

I apologise for any inconvenience this may have caused. As noted in your letter, this oversight does not affect the operation or effect of the Regulations.

If you wish to discuss this matter further, please contact Patricia Athanasiadis, Director, Justice System and Policy Reform, DJCS at patricia.athanasiadis@justice.vic.gov.au.

Yours sincerely



Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

17 / 12 / 2024



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Tim Pallas
Minister for Industrial Relations
Level 4, 1 Treasury Place
East Melbourne
Victoria, 3002

By email: treasurer@dtf.vic.gov.au

Dear Treasurer,

SR No. 68 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 4 November 2024.

The Subcommittee resolved to raise two related matters with you about the Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024 (the Regulations).

[Treasury Corporation of Victoria \(Prescribed Agencies\) Regulations 2024](#)

The Regulations were made under section 44 of the *Treasury Corporation of Victoria Act 1982* on 2 July 2024. The Regulations revoke and replace the Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2014 in substantially the same form.

The Regulations prescribe two bodies to be “prescribed agencies” that the Act applies to. These are:

- Agriculture Victoria Services Pty Ltd (A.C.N. 006 598 198)
- Rolling Stock Holdings (Victoria) Pty Limited (A.C.N. 104 780 056).

[Content of exemption certificate](#)

The *Subordinate Legislation Act 1994* (the SLA) requires Ministers to ensure a regulatory impact statement is prepared to accompany a statutory rule. This is unless an exemption under section 8 of the SLA applies. Section 8 provides different categories of exemptions.

The Regulations are accompanied by an exemption certificate issued under section 8(1)(c) of the Regulations. Exemptions under section 8(1)(c) are on the basis that the statutory rule is of a fundamentally declaratory or machinery nature. There appears to be two minor issues with the exemption certificate.

First, the certificate exempts the Regulations under section 8(1)(c), but on the basis that the Regulations “would not impose a significant economic or social burden on a sector of the public”. This wording is for an exemption under section 8(1)(a), rather than section 8(1)(c). Section 8(1)(c) appears to be the appropriate category for the exemption and the correct wording should have been included in the certificate. The Subcommittee requests that future exemption certificates contain the correct wording.

Second, section 8(3) of the SLA requires an exemption certificate to specify the reasons for the exemption. The certificate for the Regulations does not appear to do. It uses the wording of a section 8(1)(c) exemption, but without an explanation of why the Regulations are of a fundamentally declaratory or machinery nature:

The reasons for forming this opinion are that the proposed statutory rule deals with matters that are of a fundamentally declaratory or machinery nature.

The Subcommittee draws your attention to the [Committee Practice Note](#). It notes the Subcommittee’s expectation that exemption certificates adequately explain the reasons for granting the exemption.¹

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Scrutiny of Acts and Regulations Committee, *Committee Practice Note*, <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>> accessed 26 September 2024, p. 1.



Treasurer of Victoria

Minister for Industrial Relations
Minister for Economic Growth

1 Treasury Place
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Melbourne Victoria 3001
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D24/254889

Mr Gary Maas MP
Chair, Scrutiny of Acts and Regulations Committee, Parliament of Victoria
Parliament House, Spring Street
EAST MELBOURNE VIC 3002
sarc@parliament.vic.gov.au

Dear Mr Maas

SR NO. 68 – TREASURY CORPORATION OF VICTORIA (PRESCRIBED AGENCIES) REGULATIONS 2024

Thank you for your letter of 6 November 2024 regarding the exemption certificate that accompanied the Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2024 (the Regulations).

I acknowledge that the exemption certificate, which was prepared under section 8(1)(c) of the *Subordinate Legislation Act 1994* (the SL Act), inadvertently used wording relevant to exemptions under section 8(1)(a). I will ensure that future exemption certificates include wording relevant to the section of the SL Act under which the certification is made.

Relating to your second comment, I acknowledge that the exemption certificate used the wording for section 8(1)(c) of the SL Act as the reason for the exemption, rather than explaining why the Regulations were of a “fundamentally declaratory or machinery nature”. In response, I deem the Regulations to cover matters “fundamentally declaratory or machinery nature”, because their sole purpose is to define the term “prescribed agency” in the *Treasury Corporation of Victoria Act 1992*. The Regulations declare “prescribed agency” as Agriculture Victoria Services and Rolling Stock Holdings (Victoria), to allow these agencies to borrow from the Treasury Corporation of Victoria.

Should the Subcommittee wish to discuss this matter further, please contact Julie Osborn, Director, Department of Treasury and Finance via email at julie.osborn@dtf.vic.gov.au.

I hope this information has been helpful to you and the Subcommittee and thank you again for bringing these matters to my attention.

Yours sincerely

Tim Pallas MP
Treasurer
17/11/2024



OFFICIAL



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Harriet Shing
Minister for Water
Level 16, 8 Nicholson Street
East Melbourne
Victoria, 3002

By email: harriet.shing@minstaff.vic.gov.au

Dear Minister

Seven Waterways Protection By-laws

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered seven by-laws made by catchment management authorities at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the following by-laws:

- By-law No. 02 Waterways Protection 2024 – North Central Catchment Management Authority
- By-law No. 3 Waterways Protection 2024 – Wimmera Catchment Management Authority
- By-law No. 2 Waterways Protection 2024 – Mallee Catchment Authority
- By-law No. 4 Waterways Protection 2024 – West Gippsland Catchment Management Authority
- By-law No. 5 Waterways Protection 2024 – Corangamite Catchment Management Authority
- By-law No. 1 Waterways Protection 2024 – North East Catchment Management Authority
- By-law No. 4 Waterways Protection – Goulburn Broken Catchment Management Authority.

The relevant by-laws

In June 2024, seven catchment management authorities issued by-laws for waterways protection. The by-laws apply to the districts that the catchment management authorities are responsible for. The authorities all adopted the Waterways Protection Model By-law 2024 (the Model By-law) for their districts.

The Model By-law was made on 6 March 2024. It prescribes matters relating to:

- the control, management and authorisation of works and activities in designated waterways and designated land or works
- the protection and care of designated waterways and designated land or works
- the conservation and preservation of flora, fauna and habitat in designated waterways and designated land or works.

Request for further information about consultation undertaken

Each by-law was accompanied by a consultation certificate issued under section 12C of the *Subordinate Legislation Act 1994*. The certificates stated that consultation was undertaken with:

- every other Minister whose area of responsibility may be affected by the by-law
- Registered Aboriginal Parties whose Country overlaps with the extent of the by-law
- energy and telecommunications utilities
- urban and rural water corporations
- Victorian government agencies who carry out works or activities on waterways or regulate water ways
- Municipal Association of Victoria
- broader community via the Engage Victoria website.

The material accompanying the by-laws did not provide details about the consultation process undertaken with the broader community. The Subcommittee requests further information on the consultation that took place with the broader community via the Engage Victoria website for each of the seven by-laws.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024. Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Gayle Tierney MP

Minister for Skills and TAFE
Minister for Water

Level 1, 2 Treasury Place
East Melbourne, Victoria 3002 Australia
Telephone: +61 3 8392 2220

MIN-241201814

Mr Gary Maas MP
Chair, Scrutiny of Acts and Regulations Committee
M.K.M@parliament.vic.gov.au

Dear Mr Maas,

Thank you for your letter to the former Minister for Water, the Hon Harriet Shing, about the making of the waterways protection by-laws by catchment management authorities (CMAs) in 2024.

The *Waterways Protection Model By-law 2024* (Model By-law) and subsequent CMA waterways protection by-laws were made in accordance with Part 13B, Division 2 of the *Water Act 1989* (Water Act).

Part 13B, Division 2 sets out the procedure for CMAs (as Authorities under the Water Act) to make a by-law using a model by-law. This requires public consultation for the making of a model by-law and does not require separate public consultation for individual CMA by-laws made using a model. The broader community consultation undertaken for the Model By-law is therefore the broader community consultation for each of the subsequent CMA waterways protection by-laws.

As part of the consultation process, and in accordance with the Water Act and *Subordinate Legislation Act 1994*, the former Minister for Water gave notice of the proposal to issue the Model By-law in *The Weekly Times* (as a newspaper circulating generally across Victoria) on 15 November 2023, in the *Victoria Government Gazette* on 16 November 2023 and the Victorian Public Notices website on 15 November 2023. In these notices, the community was directed to the Engage Victoria webpage for the Model By-law and was invited to provide comments and submissions on the proposed Model By-law for a period of one month in accordance with the *Water Act 1989*. Further details about the consultation including results can be found on the Engage Victoria webpage for the Model By-law (<https://engage.vic.gov.au/waterwaysprotectionmodelbylaw/>).

If you would like more information about this matter, please contact Nikki Gemmill, Director, Waterway Policy and Programs Branch, Department of Energy, Environment and Climate Action on 0429 153 129 or at nikki.gemmill@deeca.vic.gov.au.

Thank you again for writing to the former Minister for Water and I trust this information will be of assistance.

Yours sincerely,

The Hon. Gayle Tierney MP
Minister for Skills and TAFE
Minister for Water

17/12/25



Official



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Tim Pallas
Minister for Industrial Relations
Level 4, 1 Treasury Place
East Melbourne
Victoria, 3002

By email: treasurer@dtf.vic.gov.au

Dear Treasurer,

Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above legislative instrument at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A) (the Declaration).

Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)

The Declaration was made under section 3(2A) of the *Duties Act 2000* on 20 June 2024. The Declaration excludes “public liability attaching to householder insurance policies” from the definition of business insurance. This insurance will not be subject to the gradual abolition of duty on premiums that was announced as part of the 2023-24 Budget.

Further information on analytical and consultation process

The *Subordinate Legislation Act 1994* (the SLA) requires Ministers to ensure a regulatory impact statement is prepared to accompany a legislative instrument. This is unless an exemption under section 12F of the SLA applies. Section 12F provides different categories of exemptions.

The Declaration is accompanied by an exemption certificate issued under section 12F(1)(g) of the SLA, on the basis that the legislative instrument has undergone an analytical and consultation process equivalent to the process for a regulatory impact statement.

Exemptions under section 12F(1)(g) are relatively uncommon. The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) prescribe requirements for statutory rules exempt under section 12F(1)(g). The process undertaken does not have to be identical to the RIS process, but it should be equivalent.

The Guidelines state:

Section 12H of the SL Act sets out a number of RIS requirements which should preferably be met by the equivalent process. However, as a minimum, the process must meet the following substantive requirements to qualify for exemption under this provision:

- the instrument must undergo an analysis of the costs and benefits, including consideration of alternative options for achieving the regulatory goal;
- the analysis must be independently assessed; and
- the instrument must undergo a public consultation for at least 28 days.

The material accompanying the Declaration, including the exemption certificate, provides some detail about the process undertaken. For example, the exemption certificate states the Declaration underwent consultation with affected stakeholders and an assessment of the proposal's costs and benefits.

The Subcommittee requests further information about the analytical and consultation process that informed the making of the Declaration. Specifically, the Subcommittee would appreciate further information on the options analysed (including costs and benefits of the preferred option), the consultation process, and whether the analysis was independently assessed.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Treasurer of Victoria

Minister for Industrial Relations
Minister for Economic Growth

1 Treasury Place
GPO Box 4379
Melbourne Victoria 3001
Telephone: +61 3 7005 9474

D24/260043

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

Dear Mr Maas

DECLARATION OF A KIND OF INSURANCE THAT IS EXCLUDED FROM THE DEFINITION OF BUSINESS INSURANCE UNDER SECTION 3(2A) OF THE *DUTIES ACT 2000*

Thank you for your letter dated 6 November 2024 in relation to my declaration under section 3(2A) of the *Duties Act 2000* (the Declaration) to exclude public liability attaching to householder insurance policies (household PL insurance) from the definition of business insurance under the *Duties Act 2000*.

As requested, further information on the analytical and consultation process that informed the making of the Declaration is set out below.

Background

As part of the 2023–24 budget, the Government announced the gradual abolition of duty on business insurance over a 10-year period commencing from 1 July 2024. It was intended that this revenue initiative would not extend to duty on any householder insurance policies, such as household PL insurance.

Notwithstanding this intention, household PL insurance was included in the legislated gradual abolition of duty on business insurance due to an unintended consequence of amendments to the *Duties Act 2000* made by the *State Taxation Acts Amendment Act 2023* (2023 Act).

The Declaration

The goal of the Declaration was to rectify the unintended consequence of the 2023 Act and exclude household PL insurance from the gradual abolition, as originally intended.

There were no alternative policy option which could fully achieve this goal – either household PL insurance could be included in or excluded from the legislated abolition.

Analysis of costs and benefits of the Declaration

The Declaration formed part of the 2023–24 budget process, which included an assessment of the types of business insurance policies that should be included in the abolition.



Analysis of the financial costs and benefits of including a type of insurance in the gradual abolition involved analysis of the direct exchange of lower amounts of duty payable by insurers / insured (benefits) for lower revenue for the Government (costs).

Inversely, the financial costs and benefits of excluding household PL insurance from the gradual abolition (i.e. the Declaration) involved a similar direct exchange.

The financial costs for insurers / insured were a higher amount of duty than if the Declaration was not made (but the same amount of duty as if the 2023 Act was not made). The financial benefits of the Declaration were higher revenue for the Government than if the Declaration was not made (equal to the costs for insurers / insured).

The costs and benefits of the Declaration should also be considered against the regulatory position previously in place. Given that the 2023 Act would have inadvertently reduced the amount of duty applicable on household PL insurance, the Declaration also had the benefit of ensuring that insurers would avoid a range of business costs associated with changing existing insurance policies to remain compliant with the law. This is because policies generally represent insurance premiums as inclusive of taxes and charges and, without altering policy structures, insurers would risk overcharging for household PL insurance.

Independent assessment

In assessing whether a regulatory impact statement (RIS) was required for the Declaration, the State Revenue Office (SRO) consulted with Better Regulation Victoria in the Department of Treasury and Finance. This consultation included a general discussion of the costs and benefits of the Declaration and the merits of an exemption from a RIS under section 12F(1)(g) of the *Subordinate Legislation Act 1994*.

External consultation

From at least February 2024, the SRO consulted with the Insurance Council of Australia (ICA) on issues related to the gradual abolition of insurance duty, including the treatment of household PL insurance. As part of this consultation, the ICA made submissions to the SRO and me on the treatment of household PL insurance including expressing support for its exclusion from the gradual abolition (i.e. the effect of the Declaration).

On 14 May 2024, 37 days before I made the Declaration, I publicly announced in Parliament my intention to exclude household PL insurance from the definition of business insurance in the *Duties Act 2000* during my second reading speech for the 2023 Act. I also confirm this position in writing in the Explanatory Memorandum for the 2023 Act, which was tabled in Parliament and publicly available for consideration on the same day.

I trust the above information is of assistance to the Regulations Review Subcommittee.

Yours sincerely



Tim Pallas MP
Treasurer
 17/12/2024



Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Ros Spence
Minister for Agriculture
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: ros.spence@parliament.vic.gov.au

Dear Minister,

Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above legislative instrument at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses (the Determination).

[Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses](#)

The Determination was made by Dairy Food Safety Victoria under the *Dairy Act 2000* (the Act) on 15 July 2024. The Determination sets classes of dairy licences and fixes fees for those licence classes for the 2024-25 financial year.

[Potential retrospectivity of the Determination](#)

The Determination sets fees for dairy licence classes from 1 July 2024 to 30 June 2025. Clause 2 of the Determination provides that the LI comes into effect on 1 July 2024.

It appears that the Determination may have retrospective effect. The Determination came into effect on 1 July but was made after that date on 15 July 2024. The effect may be that a holder of a dairy licence would be required to pay fees for the period from 1 July, when the authority for issuing fees was made later that month. The regulation-making powers in the Act do

not explicitly confer authority for the Determination to be made retrospectively.

Section 25A(1)(b)(i) of the *Subordinate Legislation Act 1994* provides that the Committee may report to Parliament if it considers a legislative instrument has retrospective effect, without clear and express authority being conferred by the authorising Act.

The Subcommittee wishes to draw your attention to the retrospective commencement date of 1 July 2024. The Subcommittee also seeks further information on the retrospective operation and effect of the Determination.

Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Ros Spence MP

Minister for Agriculture
Minister for Community Sport
Minister for Carers and Volunteers

GPO Box 4509
Melbourne, Victoria 3001 Australia
Telephone: 1300 622 308

MIN-241100985

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Mr Maas MP

Thank you for your letter of 6 November 2024 on behalf of the Scrutiny of Acts and Regulations Committee (SARC) about the Dairy Food Safety Victoria (DFSV) Determination of Licence Classes and Fees for Dairy Businesses.

DEECA informs me it requires more time to respond and have contacted your office to confirm that this is acceptable. I will endeavour to provide a full response as soon as possible to provide clarity to SARC.

If you require any assistance in relation to this matter, please contact Mitchell Houten, Manager Food Safety Policy at Mitchell.Houten@agriculture.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'RS', written over a light blue circular watermark.

The Hon. Ros Spence MP
Minister for Agriculture

21/11/2024



Official



The Hon. Ros Spence MP

Minister for Agriculture
Minister for Community Sport
Minister for Carers and Volunteers

GPO Box 4509
Melbourne, Victoria 3001 Australia
Telephone: 1300 622 308

MBR-241101515

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By email: SARC@parliament.vic.gov.au

Dear ^{Gary} ~~Mr~~ Maas MP

Thank you for your letter of 6 November 2024 on behalf of the Scrutiny of Acts and Regulations Committee (SARC) concerning the Dairy Food Safety Victoria (DFS) Determination of Licence Classes and Fees for Dairy Businesses (the Determination).

SARC provides a valuable and important contribution to the legislative process, and I thank you for your considered comments. I provide the following in response to SARC's query.

Query

SARC has sought further information on the potential retrospectivity of the Determination. Clause 2 of the Determination provides that the legislative instrument comes into effect on 1 July 2024. SARC notes that it appears that the Determination may have retrospective effect, as it was only made on 15 July 2024.

SARC further notes that the effect of this may be that a holder of a dairy licence would be required to pay fees for the period from 1 July 2024, when the authority for issuing such fees was made later that month. The legislative instrument-making powers in the *Dairy Act 2000* (Dairy Act) does not explicitly confer authority for the Determination to be made retrospectively.

Response

The Determination was intended to be consistent with the previous 'Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses' published in the Victoria Government Gazette No. S306 on 16 June 2023. This applied for the period 1 July 2023 until 30 June 2024. In the interests of continuity, clause 2 of the Determination stipulated a commencement date of 1 July 2024 following the expiry of the previous Determination of 30 June 2024.

The original intention was to gazette the instrument on 1 July 2024, however the Determination was made and published in the Victoria Government Gazette on 15 July 2024 and no change was made to clause 2 of the Determination to update the commencement date, leading to the discrepancy of dates raised in your correspondence.



OFFICIAL
Official

The Determination is a legislative instrument for the purposes of the *Subordinate Legislation Act 1994* (SLA) and as such, only came into legal effect once it was published in the Victoria Government Gazette as required under section 16A of the SLA. As it was in fact made and published in the Victoria Government Gazette on 15 July 2024, it only has legal force from this date and the inadvertent reference to 1 July 2024 is redundant.

The Determination was not intended to be retrospective, and even if it purported to have retrospective effect, I am of the view this does not render the Determination to be invalid in its entirety. Section 22 of the *Interpretation of Legislation Act 1984* (ILA) operates to ensure that clause 2 of the Determination is narrowly construed. Section 22(1) of the ILA provides that every subordinate instrument shall be construed as operating to the full extent of, but so as not to exceed –

- (a) the legislative power of the State of Victoria or
- (b) the power to make the subordinate instrument conferred by the Act under or pursuant to which it is made.

It is the intent that where a provision of a subordinate instrument would, but for this section, have been construed as being in excess of that power; it shall nevertheless be a valid provision to the extent to which it is not in excess of that power. Therefore, the remainder of the subordinate instrument and the remainder of that provision shall not be affected.

In applying section 22(1) of the ILA, the commencement date of 1 July 2024 contained in clause 2 of the Determination is 'read down' as it only has effect on making and gazettal from 15 July 2024. Therefore, provisions in the Determination come into effect on 15 July 2024 and not 1 July 2024. That is, a narrow interpretation should be adopted. As the Dairy Act does not expressly confer authority for a subordinate instrument to be made retrospectively, the commencement of the Determination will be 'read down' to be the date on which the Determination was made, being the 15 July 2024 and not 1 July 2024. The remaining clauses in the Determination will nevertheless be valid to the extent they are not in excess of the powers conferred by the Dairy Act to make the Determination, in accordance with section 22(1) of the ILA. This confirms the validity of the Determination.

Notwithstanding the above, I confirm that, on the advice of DFSV, the new fees set in the Determination were not charged to dairy licensees prior to the Determination being made on 15 July 2024.

The new fee schedule was not used to charge licence applicants by DFSV until 1 August 2024, as the annual dairy licence application renewal process does not begin until that time. No fees were charged by the DFSV until after 1 August 2024. This was communicated directly to existing licensees via email and the wider public by publication on the DFSV website. As a result, the fees were in fact charged prospectively.

I hope that this additional information is of assistance and provides clarity to SARC.

Yours sincerely



The Hon. Ros Spence MP
Minister for Agriculture

6.11.24



Scrutiny of Acts and Regulations Committee

25 November 2024

The Hon. Lizzie Blandthorn
Minister for Children
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: lizzie.blandthorn@parliament.vic.gov.au

Dear Minister

Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above legislative instrument at a meeting on 20 November 2024.

Pursuant to section 21(1)(i) of the Subordinate Legislation Act 1994 (SLA) the Subcommittee seeks additional information in relation to Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres (Order).

The *Education and Training Reform Amendment (Early Childhood Employment Powers) Act 2024* amended the *Education and Training Reform Act 2006* to provide for government-run early learning centres (government ELCs). The Order sets fees for services provided at four prescribed government ELCs.

The Order is accompanied by an exemption certificate issued under section 12F(1)(a) of the SLA. The certificate exempts the Order from the requirement to prepare a regulatory impact statement on the basis it would not impose a significant economic or social burden on a sector of the public.

The certificate states:

The reasons for forming this opinion are that the proposed Legislative Instrument does not impose any additional burden on families as there are no private services of this kind which are provided for free in Victoria and the fees payable for children to enrol in and attend government early learning centres (ELCs) will be lower than those for nearby services. Further, the fees imposed by the proposed Legislative Instrument are not regulatory charges, but rather voluntary fees for service.

While the fees in the proposed Legislative Instrument are set at less than the average fee level of the area in which a government ELC is located, the proposed Legislative Instrument does not impose a significant burden on private sector early learning and childcare providers because government ELCs will be located only in areas identified as lacking sufficient private early learning and childcare options for families, and as such will be unlikely to materially impact the demand for their services.

The Subcommittee requests additional information in relation to the economic burden imposed by the Order.

It is not compulsory for children to attend a government ELC. However, there are fees for attendance. The threshold value of \$2 million in the Subordinate Legislation Guidelines 1994 is used to determine whether there is a ‘significant burden.’

It would be of assistance to understand the level of costs imposed by the new fees.

Response

The Subcommittee would appreciate your response by Friday, 29 November 2024. This provides the Subcommittee with sufficient time to consider the response prior to the expiry of the disallowance period.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines*, <<https://www.parliament.vic.gov.au/491876/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>> accessed 14 November 2024, p. 27.



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council
Minister for Children
Minister for Disability

GPO Box 1774
Melbourne Victoria 3001
Telephone: 1300 607 665
www.education.vic.gov.au

COR24151477

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
C/O: helen.mason@parliament.vic.gov.au

Dear Chair

I refer to your letter on behalf of the Scrutiny of Acts and Regulations Committee (**Committee**) regarding Ministerial Order 1452 – *Fees for Services Provided to Children in Government Early Learning Centres*, as made on 7 August 2024 (**the Order**). My response to the Committee's request for further information on the economic burden imposed by the Order, including the level of costs incurred by families, is contained below.

Total fees to be collected under the Order

Once relevant subsidies have been applied to offset the fees in the Order, the economic burden of the Order for 2025 would be approximately \$955,000, which is below the indicative \$2,000,000 threshold for ascertaining whether a significant burden would be imposed¹.

The Order only imposes fees for the provision of early childhood education and care at 4 government early learning centres (government ELCs) specified in Schedule 1 to the Order commencing from 2025. As such, the impact of the Order is confined to those 4 government ELCs. An additional Ministerial Order will be required to impose fees at any additional government ELCs.

It is standard industry practice for fees to be charged for early childhood education and care services delivered by equivalent providers. For each of the 4 government ELCs, the fees in the Order have been deliberately fixed to be slightly lower than the average fees charged by existing local providers.

It is anticipated that up to 350 children may be enrolled at the 4 government ELCs in 2025. On this basis, the total forecasted fees payable under the Order for 2025 (without factoring any Victorian or Australian Government subsidies) will be \$7.6 million.

In most cases, however, fees are also subsidised by the Victorian and Australian governments. The Child Care Subsidy (CCS) is administered by the Australian Government and reduces

¹ Paragraph 117 of the Subordinate Legislation Act Guidelines 2023 states that: 'The \$2 million threshold is indicative only and should be reserved for situations where it is not otherwise clear that a significant burden may be imposed.'



foundation for a successful transition to school. These experiences contribute to better long-term outcomes in both education and employment. Further, access to affordable early childhood education and care provides immediate economic benefits to families where it enables parents to return to paid employment.

Impact on businesses

The 4 government ELCs opening in 2025 are the first of the 50 government ELCs being established in communities across Victoria with greatest need as part of the Best Start Best Life reforms. Locations for the 50 government ELCs have been selected using data to identify existing childcare supply, excess demand for childcare, and how disadvantaged the areas are, based on Socio-Economic Indexes for Areas (SEIFA). As a result, government ELCs are being located in areas where there is insufficient supply of childcare places and any impact on local private providers is expected to be minimal.

Should you wish to discuss this matter further, please contact Burton Reynolds, Director, Commercial and Legislation at the Department of Education on 03 7022 0952 or burton.reynolds@education.vic.gov.au.

I trust this information is of assistance to the Committee.

Yours sincerely



Hon Lizzie Blandthorn MP
Deputy Leader of the Government in the Legislative Council
Minister for Children
Minister for Disability

28/11/24



Scrutiny of Acts and Regulations Committee

13 December 2024

The Hon. Jaclyn Symes
 Attorney-General
 Level 26, 121 Exhibition Street
 Melbourne
 Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024 (Rules) at a meeting on 3 December 2024.

The Rules implement a new costs model for the Supreme Court and County Court based on time costing. The amendments result from the Courts' 2021 review of litigious costs and associated recommendations.

The Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994* (SLA).

Section 15A of the SLA requires the responsible Minister to provide specified documentation to the Committee no later than 10 working days after the statutory rule is made. The Rules were made on 5 September 2024. The specified documentation was received by the Subcommittee on 25 September 2024, 14 working days after the Regulations were made.

Pursuant to section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response by Monday, 3 February 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkenny MP

Attorney-General
Minister for Planning

121 Exhibition Street
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 24122393

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Maas

Thank you for your letter to the former Attorney-General, the Hon Jaclyn Symes MP regarding SR No. 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024. I apologise for the delay in responding to you.

Thank you for your advice regarding the requirement to provide specified documents to the Committee no later than 10 working days after a statutory rule is made. I note that timeliness in sending this material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation and will endeavour to meet the timeframe going forward.

Yours sincerely

The Hon. Sonya Kilkenny MP
Attorney-General
Minister for Planning

Date: 10/2/2025





Scrutiny of Acts and Regulations Committee

17 February 2025

The Hon. Nick Staikos
Minister for Consumer Affairs
2 Treasury Place
East Melbourne
Victoria, 3002

By email: minister.staikos@dgs.vic.gov.au

Dear Minister

SR No. 90 – Credit Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 90 – Credit Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations prescribe matters which support the operation of the *Credit Act 1984* (Act). The Act regulates credit contracts entered into prior to 1 November 1996.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to two matters.

(1) Matters appropriate for primary legislation

Section 21(1)(e) of the *Subordinate Legislation Act 1994* (SLA) authorises the Subcommittee to consider whether a statutory rule ‘contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation.’ Pursuant to section 21(1)(e) the Subcommittee requests additional information about the operation of regulation 9 of the Regulations.

Section 11 of the Act makes general provision for credit charges including the calculation of accrued credit charges. Pursuant to section 11(2)(c) the Regulations prescribe applicable methods for calculating *accrued credit charges*.

Section 11(2) of the Act assists with the interpretation of the definition of **accrued credit charge**. It sets out for those purposes how to calculate the amount of the credit charge accrued at a particular time.

Section 11(2) sets out three methods to calculate this amount:-

- (a) by adding together the amounts ascertained by applying the daily percentage rate to the unpaid daily balances (being daily balances before that time)—
 - (i) in the case of a credit sale contract—of the amount financed; or
 - (ii) in the case of a loan contract—of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time;
- (b) where Schedule 1 applies to the credit sale contract or loan contract—in accordance with the formula set out in that Schedule; or
- (c) where an applicable method is prescribed for the purposes of this subsection—in accordance with that method.

Regulation 9 prescribes two methods of calculating an accrued charge. One method set out in subregulation (2) provides:-

- (2) For the purposes of section 11(2) of the Act, an applicable method for calculating the amount of the credit charge which has accrued at a particular time is to apply the formula set out in Schedule 1 to the Act, and for the purpose of that application that Schedule is to be read and construed as if it had been amended by inserting the following at the end of item 3(c)—
 - “; and
 - (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28th, 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided.”

The effect of regulation 9 is to prescribe under section 11(2)(c) an applicable method of calculating an accrued charge by adding a paragraph to Schedule 1 of the Act.

Item 3 of Schedule 1 of the Act as amended by regulation 9 (underlined), states:-

- 3. For the purposes of this Schedule—
 - (a) instalments shall be deemed to be equal if all the instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than \$5 or 5 per centum of the amount of each of the other instalments, whichever is the greater;
 - (b) monthly intervals shall be deemed to be equal intervals; and
 - (c) intervals shall be deemed to be equal if all the intervals except one are of the same length and the difference between the length of that one

interval and the length of each of the other intervals is not more than 5 per centum of the length of each of the other intervals; and

(d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28th, 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided."

Regulation 9 appears to modify the operation of a provision of the Act. It modifies the wording of a provision in Schedule 1 in the primary legislation. The provision has been in place for 30 years. It was incorporated in the Credit Regulations 2014, Credit Regulations 2004, and Credit Regulations 1995.

The Subcommittee notes the Act enables regulations to prescribe methods for calculating accrued credit charges. The Subcommittee also notes the section 13 certificate issued by the Chief Parliamentary Counsel states the statutory rule appears to be within the powers conferred by the authorising Act.

Regulation 9 clarifies the operation of the Act. However, the Subcommittee notes there does not appear to be a provision in the Act which authorises subordinate legislation to modify the wording or operation of the Act.

The approach of the Senate Committee for the Scrutiny of Delegated Legislation (Senate Committee) is of assistance when considering the matter. The Senate Committee has produced guidelines (Senate Guidelines).¹ Provisions in subordinate legislation which modify the operation of primary legislation may limit parliamentary oversight and subvert the relationship between Parliament and the Executive.²

The Senate Committee expects if provisions modifying primary legislation are included in subordinate legislation, the explanatory memorandum for the subordinate legislation explain the following matters:-

- the specific legislative authority relied upon to create the modification to primary legislation in delegated legislation;
- the nature and scope of the modification;
- why it is considered necessary and appropriate to create the modification to primary legislation in delegated legislation (rather than directly amending the relevant primary legislation);
- the duration of the modification and, if the instrument is not time limited, the reason for why this is necessary;

¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, *Guidelines*, 3rd ed, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Committee_guidelines> accessed 13 February 2025, p. 39.

² *Ibid.*

- whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate (including to determine whether it is appropriate to continue to include the provisions in delegated legislation or to include them in primary legislation such as the enabling Act).

The Committee notes the Regulations may modify the operation of primary legislation by amending Schedule 1. It may be the provisions ought be more properly dealt with by an Act rather than the Regulations.

The Subcommittee requests additional information in relation to the following matters:-

- **the effect of regulation 9 of the Regulations and whether it modifies the operation of the Act;**
- **section 11(2) and the authorisation to make regulations which amend Schedule 1 of the Act;**
- **the nature and scope of any amendments to the Act by the Regulations with reference to the Senate Guidelines.**

(2) Incorrect exemption category

Section 7 of the SLA requires Ministers to ensure a regulatory impact statement (RIS) is prepared for a statutory rule unless an exemption applies under section 8. Section 8 provides different categories of exemptions.

The Regulations are accompanied by an exemption certificate which states the Regulations are exempt under section 8(1)(a) on the basis that the statutory rule would not impose a significant economic or social burden on a sector of the public. Accordingly, an RIS was not prepared to accompany the Regulations.

The section 8 certificate states:-

[T]he proposed Credit Regulations 2024 are declaratory or machinery nature and only have effect to prescribe matters that support the continued regulation, under the Credit Act 1984, of credit contracts that were entered into in Victoria prior to 1 November 1996, thus providing a stable regulatory environment for all parties to such credit contracts.

This reflects the wording of an exemption certificate issued pursuant to section 8(1)(c). Section 8(1)(c) provides regulations may be exempt from the RIS process if “the proposed statutory rule is of a fundamentally declaratory or machinery nature.” The Subcommittee notes the 2014 Regulations were exempt under that category.

The Regulations appear to be appropriately exempt from the requirement to prepare an RIS. The Subcommittee draws your attention to the [Committee’s](#)

Practice Note, which is developed to assist government departments comply with obligations under the SLA.³ The Practice Note notes the importance of using the appropriate exemption category when exempting regulations from the RIS statement process.

The Subcommittee notes the Regulations may have been exempt under the incorrect section 8 category.

Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

³ *Scrutiny of Acts and Regulations Committee, Committee Practice Note*, <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>> accessed 13 February 2025, p. 1.



The Hon Nick Staikos MP

Minister for Consumer Affairs
Minister for Local Government

Level 1, 2 Treasury Place
East Melbourne, Victoria 3002

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
By email: SARC@parliament.vic.gov.au

CMIN-250201291

Dear Mr Maas,

Gary

SR NO. 90 – CREDIT REGULATIONS 2024

Thank you for your letter dated 17 February 2025 in relation to the Credit Regulations 2024 (Regulations). The Scrutiny of Acts and Regulations Committee (Committee) plays an important role in supporting the Victorian Parliament in legislative best practice.

I extend my thanks the Regulations Review Subcommittee (Subcommittee) for its diligent scrutiny of the Regulations and I have given due consideration to the issues raised in your letter.

Credit Act and Regulations

The *Credit Act 1984* (the Act) and Credit Regulations 2024 (the Regulations) apply to consumer credit contracts entered into in Victoria prior to 1 November 1996. All consumer credit contracts entered into after this date are regulated under the National Credit Code (NCC).

In 2024, the Department of Government Services (DGS) consulted with the Australian Banking Association (ABA) and Customer Owned Banking Association (COBA) in the making of the Regulations and was advised by both ABA and COBA that there were still a number of contracts on foot that were entered into in Victoria prior to 1 November 1996. Consequently, the Regulations were remade to maintain the existing regulatory framework for applicable contracts. The Regulations do not apply to credit contracts entered into after 1 November 1996.

Matters appropriate for primary legislation

The Committee has requested further information in relation to the following matters:

- The effect of regulation 9 of the Regulations and whether it modifies the operation of the Act;
- Section 11(2) and the authorisation to make regulations which amend Schedule 1 of the Act;
- The nature and scope of any amendments to the Act by the Regulations with reference to the Senate Guidelines.

As you note in your letter, regulation 9 has been unchanged for 30 years, having been incorporated in successive remakes of the Credit Regulations in 1995, 2014 and again in 2024.

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



Section 11(2) of the Act establishes two methods for the calculation of accrued credit charges and further provides that additional applicable methods may be prescribed. In effect, there are currently four methods for calculating accrued credit charges, being the methods set out in:

- Section 11(2)(a) of the Act;
- Schedule 1 to the Act, as enacted;
- Regulation 9(1); and
- In accordance with Regulation 9(2), Schedule 1 to the Act - *as if amended* by the insertion of prescribed paragraph (d).

Regulation 9(1) supplements section 11 of the Act by providing an additional applicable method for calculating an accrued credit charge by applying the monthly percentage rate to the unpaid monthly balances of the amount financed under a credit sale contract or the amount financed other than a portion that has not been lent at that time under a loan contract.

Regulation 9(2) prescribes a further applicable method by “applying the formula set out in Schedule 1 to the Act, “*as if it had been amended*” to insert prescribed paragraph (d).

Paragraph (d) provides:

(d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28th, 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided

This method operates in addition to, and alongside, the formula contained within Schedule 1 to the Act. Schedule 1 as enacted, remains unamended and remains an applicable means of calculating an accrued credit charge.

Further, I consider that regulation 9(2,) as drafted, operates consistently with the requirements of section 32(2) of the *Interpretation of Legislation Act 1984*, which provides relevantly:

(2) If an Act (whether passed before or after the relevant day) authorises or requires provision to be made for or in relation to a matter by a subordinate instrument, the subordinate instrument, if made on or after the relevant day and unless the contrary intention appears in the Act under or pursuant to which it is made—

*(a) may make provision for or in relation to that matter by **applying, adopting or incorporating, with or without modification**, the provisions of—*

(i) an Act; or

...

as in force at a particular time or as in force from time to time; and

(b) must not make provision for or in relation to that matter by applying, adopting or incorporating any matter contained in a document (not being an Act, Commonwealth Act, Code, statutory rule or statutory rule made under a Commonwealth Act) [emphasis added].

I also note that the Act and the Regulations have a limited and decreasing regulatory impact, with application constrained to pre-1996 credit sale contracts and loan agreements. Given the longstanding nature of those existing financial arrangements, I do not consider a further review of the Victorian credit regulatory framework is necessary or appropriate at this time.

As regulation 9(2) does not modify the operation of the Act, I do not consider it necessary to address the remaining matters posed by the Committee, including any authorisation to make regulations that amend the Act, and the nature and scope of any such amendments with reference to the *Senate Standing Committee for the Scrutiny of Delegated Legislation Guidelines*.

Category of exemption from a regulatory impact statement

The Subcommittee has noted that the Credit Regulations 2014 were certified for a RIS exemption under section 8(1)(c) of the *Subordinate Legislation Act 1994* on the basis that the proposed statutory rule is of a fundamentally declarative or machinery nature. However, the composite certificate issued under section 12B(2) (certificate) of the SL) refers to section 8(1)(a) of the SLA.

The reference to section 8(1)(a) was a typographical error and should have been a reference to section 8(1)(c). I apologise for this oversight and for any confusion it may have caused.

I thank the Subcommittee for drawing my attention to the Committee's practice note addressing the requirement to designate an appropriate RIS exemption category, which I have relayed to the Department of Government Services.

Thank you again for taking the time to write to me on this matter.

Sincerely,



The Hon Nick Staikos MP
Minister for Consumer Affairs
Minister for Local Government

24/3/2025



Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Nick Staikos
Minister for Local Government
2 Treasury Place
East Melbourne
Victoria, 3002

By email: minister.staikos@dgs.vic.gov.au

Dear Minister

SR No. 92 – Local Government (Infringement Notices) Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 92 – Local Government (Infringement Notices) Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations prescribe specified offences against the Act to be infringement offences. The Regulations also prescribe associated infringement penalties.

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*¹ (the Attorney-General's guidelines) have been taken into account;
- the infringement offences either:
 - meet the requirements in the Attorney-General's guidelines, or

¹ Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislating-Agencies>> accessed 12 February 2024.

- do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states the infringement offences meet the requirements in the Attorney-General's guidelines.

The Attorney-General's guidelines state infringement penalties should be set by reference to the court-imposed maximum penalty for the offence.² They provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.

The Subcommittee notes three infringement penalties in the Regulations are set at 5 per cent of the maximum penalty a court could impose. Section 133(1) and (2) and section 134(1) of the Act have a maximum penalty of 60 penalty units. The infringement penalty in the Regulations for these offences is 3 penalty units.

There may be valid reasons for setting the infringement penalties at a lower amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a lower level than the recommended range in the Attorney-General's guidelines.

Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² Ibid., p. 24.



The Hon Nick Staikos MP

Minister for Consumer Affairs
Minister for Local Government

Level 1, 2 Treasury Place
East Melbourne, Victoria 3002

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
By email: SARC@parliament.vic.gov.au

CMIN-250201065

Dear Mr Maas,

Thank you for your letter of 14 February 2025 regarding SR No. 92 - Local Government (Infringement Notices) Regulations 2024 (Regulations). My apologies for the delay in responding.

I note the Regulations Review Subcommittee (Subcommittee) considered the Regulations at its meeting on 12 February 2025 and that the Subcommittee approved the Regulations.

I understand that the Subcommittee has requested additional information in relation to the reasons for setting infringement penalties for certain offences under sections 133(1), 133(2) and 134(1) of the *Local Government Act 2020* (the Act) at a lower level than the recommended range in the *Attorney General's Guidelines to the Infringement Act 2006* (Attorney-General's Guidelines).

I note that the Attorney-General's Guidelines recommend that infringement penalties should generally not be less than 10 per cent of the maximum statutory penalty for an offence. I also note that the infringement penalties for these offences of 3 penalty units, or 5 per cent of the statutory maximum, are therefore below the recommended range.

I wish to advise that the infringement penalties for these offences were prescribed following close consultation with the Infringements System Oversight Unit of the Department of Justice and Community Safety. The Chief Municipal Inspector, through the Local Government Inspectorate, was also closely consulted when determining the penalty amounts. The Chief Municipal Inspector is responsible for the enforcement of these offences. The lower penalty amounts set by the Regulations reflect the advice provided by the Chief Municipal Inspector regarding what would be both sufficient to achieve deterrence and proportionate to the nature of the offences.

In this regard, I note that the offences under sections 133(1), 133(2) and 134(1) of the Act relate to the requirement for councillors, members of delegate committees and key members of council staff to lodge initial and biannual personal interests with the council. These returns record the private interests of individuals in public office, helping to ensure transparency, manage conflicts of interest, and promote probity in decision-making. Given the recurring and administrative nature of these reporting obligations to which these offences relate, a lower

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infringement amount of 3 penalty units was considered to provide a proportionate and effective enforcement option in relation to the specific low-level offending behaviour.

If you would like further information, please contact Mike Gooley, Executive Director, Local Government Victoria, Department of Government Services at mike.gooley@dgs.vic.gov.au.

I trust this information is of assistance to you and the Subcommittee and thank you for taking the time to write to me about this matter.

Sincerely,



The Hon Nick Staikos MP
Minister for Consumer Affairs
Minister for Local Government

20.3.2025



Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Ros Spence
Minister for Agriculture
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: ros.spence@parliament.vic.gov.au

Dear Minister

SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations amend the Livestock Disease Control Regulations 2017. The amendments include increasing penalty amounts for 27 infringement penalties.

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the Subordinate Legislation Act 1994 (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*¹ (the Attorney-General's guidelines) have been taken into account;
- the infringement offences either:
 - meet the requirements in the Attorney-General's guidelines, or

¹ Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislating-Agencies>> accessed 12 February 2024.

- do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states that the infringement offences meet the requirements in the Attorney-General's guidelines.

The Attorney-General's guidelines state that infringement penalties should be set by reference to the court-imposed maximum penalty for the offence.² They provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.

The Subcommittee notes 21 infringement penalties in the Regulations have been set at 8.3 per cent of the maximum penalty which may be imposed by a court.

There may be valid reasons for setting the infringement penalties at a lower amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a lower level than the recommended range in the Attorney-General's guidelines.

Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² Ibid., p. 24.



The Hon. Ros Spence MP

Minister for Agriculture
Minister for Community Sport
Minister for Carers and Volunteers

GPO Box 4509
Melbourne, Victoria 3001 Australia
Telephone: 1300 622 308

MBR-250201678

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By email: SARC@parliament.vic.gov.au

Dear Mr Maas MP

Re: SR No. 95 – Livestock Disease Control Further Amendment Regulations 2024

Thank you for your letter dated 14 February 2025 on behalf of the Scrutiny of Acts and Regulations Committee, seeking further information in relation to the Livestock Disease Control Further Amendment Regulations 2024. I am pleased to provide the following information in response to your queries.

As noted in your letter, amendments made to the Livestock Disease Control Regulations 2017, introduced by the Livestock Disease Control Further Amendment Regulations 2024 (the Regulations), resulted in 21 infringement penalties being set below the range generally recommended in the Attorney General's Guidelines. In these instances, 10 penalty units represent 8.3% of the maximum court-imposed penalty of 120 penalty units.

The Department of Justice and Community Safety (DJCS) was consulted on the new infringement offences and advised that the proposed infringement amounts were suitable and consistent with the guidelines.

I acknowledge that the documentation accompanying the Regulations did not explicitly outline the rationale for prescribing infringement offences below the level suggested by the guidelines. I appreciate the opportunity to clarify the rationale for these settings and how the infringement penalties are considered consistent with the guidelines.

Section 2.5.2 of the guidelines provides that:

"An infringement penalty should also not be too lenient. For that reason, generally it should not be less than 10% of the maximum penalty that a court could impose if the person were prosecuted".

I note the guidelines provide that the 10% guideline is generally applicable and needs to be balanced with other considerations provided for setting the infringement penalty. This contrasts with other requirements of the guidelines, such as the requirement for the infringement penalty for an individual to not exceed 12 penalty units, which is expressed in more definitive terms i.e. "the infringement penalty for an individual must be no more than 12 penalty units".

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The following factors informed my decision to proceed with the prescribed penalty amounts:

Comparative analysis with other infringement offences

A review of hundreds of infringement penalties provided by the DJCS found that 10 penalty units is the prevailing standard for offences of a similar nature. Notably, there was no clear precedent for imposing 12 penalty units in similar cases. Aligning with established practice ensures consistency across the regulatory framework while maintaining a proportionate approach to enforcement.

Alignment with Guidelines and proportionality considerations

For offences with a maximum penalty of 120 penalty units, an infringement penalty set at 10% would be 12 penalty units. However, the guidelines also stress that infringement penalties should be proportionate and designed to encourage compliance rather than prosecution.

Excessively high penalties increase the likelihood of contested fines, which can undermine the efficiency of the infringement system. Given that 12 penalty units is also the maximum infringement penalty allowable for an individual, 10 penalty units was considered appropriate and proportionate in the circumstances to balance between deterrence, enforceability and fairness.

Consultation with Department of Justice and Community Safety

The department consulted with DJCS regarding the proposed penalties. DJCS reviewed them against the guidelines and confirmed that 10 penalty units was an appropriate penalty level. This assessment considered legal precedent, proportionality and the broader infringement framework.

Fairness, consistency and deterrence

The infringement penalties were set to:

- maintain consistency with comparable offences in Victoria
- ensure penalties are substantial enough to deter non-compliance; and
- avoid undue harshness, aligning with section 2.5.2 of the guidelines, which stresses that infringements should be fair, not excessive.

The infringement penalties of 10 penalty units uphold the principles of proportionality, fairness, and consistency set out in the guidelines. This decision was supported through consultation with DJCS and comparative analysis of existing penalties.

Penalties and enforcement provisions under the legislation are regularly reviewed to ensure they remain appropriate and proportionate, as demonstrated by recent legislative amendments, including the *Biosecurity Legislation Amendment (Incident Response) Act 2024* and the Regulations.

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Should you require any further details, please do not hesitate to contact Angela Brierley, Director Food, Chemicals and Biosecurity Regulatory Policy, by email at angela.brierley@agriculture.vic.gov.au or by phone at 0408 016 272.

I trust that this information is of assistance.

Yours sincerely



The Hon. Ros Spence MP
Minister for Agriculture

3.3.25

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Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Melissa Horne
Minister for Roads and Road Safety
Level 22, 1 Spring Street
Melbourne
Victoria, 3000

By email: minister.horne@minstaff.vic.gov.au

Dear Minister

SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations amend the Road Safety (General) Regulations 2019. They increase traffic infringement penalties relating to electric scooters. They also insert a new infringement offence of being a passenger on an electric scooter and an associated penalty.

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the Subordinate Legislation Act 1994 (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*¹ (the Attorney-General's guidelines) have been taken into account;
- the infringement offences either:

¹ *Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies*, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislator-Agencies>> accessed 12 February 2024.

- meet the requirements in the Attorney-General's guidelines, or
- do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states the Regulations do not meet the Attorney-General's guidelines but should be made for the following reasons:

The Attorney-General's guidelines provide that an infringement penalty for a proposed offence must reflect the seriousness of the offence compared with other infringement offences. A person who rides as a passenger on an electric scooter without a helmet is performing two illegal acts. The penalty may seem to be disproportionate to other like offences, however, due to the disproportionately high non-compliance with electric scooter laws, and the fact that safety risks associated with being a passenger on an electric scooter increase significantly if that person is also not wearing a helmet, I am satisfied that the proposed Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (in particular regulation 4(f)) should be made notwithstanding the guidelines.

The Subcommittee notes the reasons focus on the creation of the infringement offence of being a passenger on an electric scooter. The certificate omits the other provisions which do not comply with the Attorney-General's guidelines.

The Attorney-General's guidelines provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.² The infringement penalties for rules 262C, 262D, and 262F are between 30 and 35 per cent of the maximum penalty which may be imposed by a court.

There may be valid reasons for setting the infringement penalties at a higher amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a higher level than the recommended range in the Attorney-General's guidelines.

Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

² Ibid., p. 24.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Melissa Horne MP

Minister for Health Infrastructure
Minister for Ports and Freight
Minister for Roads and Road Safety

PO Box 2392
Melbourne, Victoria 3001 Australia

Ref: BMIN-1-25-730

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulation Committee
Parliament House
SPRING STREET, EAST MELBOURNE VICTORIA 3002

Dear Mr Maas

Thank you for your letter of 14 February 2025 regarding the Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (the Regulations). You have asked for additional information in relation to the setting of penalties at a higher level than the recommended ranges in the Attorney General's Guidelines.

The Regulations implemented changes to infringement penalties for various offences in the Road Safety Road Rules 2017 (the Road Rules) that relate to the use of electric scooters (e-scooters). These regulatory changes coincided with the cessation of the trial of the use of e-scooters. The trial ended on 4 October 2024 which was the same day the Regulations commenced.

As part of the evaluation of the trial, the Government observed that there was significant non-compliance with certain Road Rules that apply to the use of an e-scooter. The Government determined that it was critical to amend the regulatory framework to support increased compliance with these Road Rules and to improve safety outcomes. In particular, the Road Safety Road Rules Amendment (Electric Scooters) Rules 2024 created new offences and increased the penalties for certain existing offences in relation to the use of an e-scooter.

The effect of these changes, as identified by the Committee, is that the ratio of infringement penalties to the maximum penalties for Rules 262C, 262D and 262F of the Road Rules is higher than what is recommended under the Attorney General's Guidelines. Rule 262C provides that it is an offence to ride an e-scooter on a footpath. Rules 262D provides that it is an offence to ride on an e-scooter on certain roads. Finally, Rule 262F provides that it is an offence for a person under 16 years of age to ride an e-scooter.



The establishment of new offences and the implementation of increased penalties are intended to serve as a deterrent to individuals who fail to comply with the Road Rules pertaining to e-scooter usage. Non-compliance with the Road Rules poses significant risks to both e-scooter riders and members of the public. Rules 262C, 262D and 262F are particularly important as significant consequences may result if the rider of an e-scooter does not comply with these requirements.

Accordingly, the Government has formed a view that it is appropriate to have infringement penalties for these offences set at amounts higher than recommended under the Attorney General's Guidelines because it is important that riders comply with these rules. Setting the infringement penalties at these amounts is intended to deter offending behaviour. Consequently, these measures enhance safety and overall amenity, while also promoting greater community confidence in the regulatory framework governing e-scooters.

Thank you for raising this matter. I trust that this information addresses your question regarding the rationale for setting of infringement penalties under the Regulations.

Yours sincerely



Hon Melissa Horne MP
Minister for Health Infrastructure
Minister for Ports and Freight
Minister for Roads and Road Safety
20/03/2025



Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Enver Erdogan
Minister for Casino, Gaming and Liquor Regulation
Level 16, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.erdogan@justice.vic.gov.au

Dear Minister

SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations extend the operation of the Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014 until 19 October 2025. The extension was granted to allow the Government sufficient time to consult with stakeholders on significant gambling reforms.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994* (SLA).

Section 15A of the SLA requires the responsible Minister to provide specified documentation to the Committee no later than 10 working days after the statutory rule is made. The Regulations were made on 15 October 2024. The specified documentation was received by the Subcommittee on 6 November 2024, 15 working days after the Regulations were made.

Pursuant to section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending

material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', is positioned above the typed name.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Enver Erdogan MLC

Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

Level 16, 121 Exhibition Street
Melbourne Victoria 3000
Telephone: 1300 315 189

Our ref: 25023085

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
East Melbourne VIC 3002

By email: sarc@parliament.vic.gov.au

SR No. 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024

Dear Mr Maas

Thank you for your letter of 14 February 2025 regarding the Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024.

The Scrutiny of Acts and Regulations Committee plays an important role in the oversight of legislation and regulations and I acknowledge that the Regulations and relevant documentation were not provided to the committee within the legislated timeframe.

I understand the Department of Justice and Community Safety unreservedly apologised for the delay in a letter accompanying the relevant documentation. As noted in that letter, the delay in providing the documents was the result of an administrative error.

There is work underway in the relevant area of the department to ensure staff are aware of the requirements of the *Subordinate Legislation Act 1994*. Process improvements are being implemented to ensure compliance with requirements when making subordinate legislation.

I trust this information has been of assistance to you.

Yours sincerely



The Hon. Enver Erdogan MLC
Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

3/3/2025



Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Ros Spence
Minister for Agriculture
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: ros.spence@parliament.vic.gov.au

Dear Minister

SR No. 113 – Plant Biosecurity Amendment Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 113 – Plant Biosecurity Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Plant Biosecurity Regulations 2016 (Principal Regulations). The amendments insert new infringement offences and associated penalties into the Principal Regulations. The Regulations also increase penalty amounts for existing infringement penalties

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*¹ (the Attorney-General's guidelines) have been taken into account;

¹ *Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies*, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislating-Agencies>> accessed 12 March 2024.

- the infringement offences either:
 - meet the requirements in the Attorney-General's guidelines, or
 - do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states that the infringement offences meet the requirements in the Attorney-General's guidelines.

The Attorney-General's guidelines state that infringement penalties should be set by reference to the court-imposed maximum penalty for the offence.² They provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.

The Subcommittee notes the following penalties are set at a rate lower than the 10 per cent amount recommended by the Attorney-General's guidelines:

- section 19(5): infringement penalty is 5 penalty units, which is 8.3 percent of the maximum penalty a court could impose (60 penalty units)
- section 133A(1): infringement penalty is 5 penalty units for a natural person and 25 penalty units for a body corporate, which is 8.3 percent of the maximum penalty a court could impose (60 penalty units for a natural person and 300 penalty units for a body corporate)
- sections 25(2), (3), (4) and 27(2): infringement penalty is 40 penalty units for a body corporate, which is 6.7 per cent of the maximum penalty a court could impose (600 penalty units).

There may be valid reasons for setting the infringement penalties at a lower amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a lower level than the recommended range in the Attorney-General's guidelines.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

² Ibid., p. 24.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Ros Spence MP

Minister for Agriculture
Minister for Community Sport
Minister for Carers and Volunteers

GPO Box 4509
Melbourne, Victoria 3001 Australia
Telephone: 1300 622 308

MBR-250301610

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Mr Maas MP

SR N. 113 – Plant Biosecurity Amendment Regulations 2024

Thank you for your letter dated 17 March 2025 regarding the Regulation Review Subcommittee's (the Subcommittee) consideration of the Plant Biosecurity Amendment Regulations 2024 (the Regulations).

The Subcommittee notes that infringement penalties should generally be set between 10% and 25% of the maximum penalty, which may be imposed by a court. The Subcommittee notes that some penalties in the Regulations are set at a rate lower than the 10% amount recommended by the Attorney-General's Guidelines to the *Infringements Act 2006* for legislating agencies (the Guidelines).

As the Guidelines are not cast in absolute terms and the percentage limits for penalty guidance are in general terms, the certificate issued by me for the specific infringement offences prescribed in the Regulations was in accordance with section 6A of the *Subordinate Legislation Act 1994*. Further to this, I provide the following information regarding certain provisions of the Regulations noted by the Subcommittee.

For the statutory offences in sections 19(5) (contravene a direction of an inspector in a control area) and 133A(1) (unauthorised plant health declaration or unauthorised use of a purported declaration) of the *Plant Biosecurity Act 2010* (PB Act), Schedule 4 of the Regulations prescribes infringement penalties for these offences at 8.3% of the maximum penalty a court could impose. As the Guidelines note, this approach aims to ensure that the infringement penalty is proportionate, that lower-level offending is addressed in an efficient way, and that only the most serious matters are taken to court via a criminal charge.

In relation to the infringement penalty of 40 penalty units for an infringement offence by a body corporate in relation to the statutory offences under sections 25(2), 25(3), 25(4) and 27(2) carrying a maximum statutory penalty for a body corporate of 600 penalty units, the infringement penalties prescribed by Schedule 4 of the Regulations are 6.7% of the maximum penalty a court could impose, and this follows the requirements of the PB Act.

Section 120 of the PB Act requires that the infringement penalty for an offence for which an infringement notice can be prescribed by regulations must not exceed 10 penalty units in the case of a natural person, and 40 penalty units in the case of a body corporate. Section 120 of the PB Act applies despite the Guidelines.



OFFICIAL
Official

If you have further questions, please contact Angela Brierley, Director Food, Chemicals and Biosecurity Regulatory Policy, Department of Energy, Environment and Climate Action at Angela.Brierley@agriculture.vic.gov.au.

Thank you again for raising these matters with me.

Yours sincerely



The Hon. Ros Spence MP
Minister for Agriculture

9/1/2024

OFFICIAL



Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny
 Attorney-General
 Level 20, 1 Spring Street
 Melbourne
 Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Supreme Court (Fees) Regulations 2018 to alter the fees charged for probate services.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to section 12 of the *Subordinate Legislation Act 1994* (SLA).

The Regulations are accompanied by a regulatory impact statement. Section 12 of the SLA applies to statutory rules which have undergone a regulatory impact statement process. Section 12 requires the responsible Minister to publish a notice advising of the decision to make or not make a statutory rule in the Government Gazette and a daily newspaper circulating throughout Victoria.

Section 12(3) provides the notice of decision to make a proposed statutory rule must be published before the proposed statutory rule is made. The Regulations were made on 6 November 2024. The notice of decision was

published in the Government Gazette on 6 November 2024 and on the Public Notices website on 7 November 2024, a day after the Regulations were made.¹

The Subcommittee notes section 12(4) of the SLA provides failure to comply with section 12(3) does not affect the operation of a statutory rule. However, it provides the Committee may report the failure to each House of Parliament.

The Subcommittee recommends processes are reviewed to ensure future notices of decision comply with section 12 of the SLA.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Pursuant to section 38M of the *Interpretation of Legislation Act 1984*, publishing a notice on the Public Notices website fulfils the requirement to circulate a notice in a print newspaper.



The Hon. Sonya Kilkenny MP

Attorney-General

GPO Box 4356
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 25032824

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Maas

SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024

Thank you for your letter dated 17 March 2025 regarding the making of the Supreme Court (Fees) Amendment Regulations 2024 (*the Regulations*).

The Scrutiny Acts and Regulations Committee has inquired into the compliance with s.12(3) of the *Subordinate Legislation Act 1994* in the making of the Regulations. I acknowledge that under section 12(3) of the *Subordinate Legislation Act 1994* the notice of decision to make a proposed statutory rule must be published before the proposed statutory rule is made.

The failure to comply with section 12(3) was the result of an administrative error and I apologise for any inconvenience this may have caused. Thank you for drawing the error to my attention. As noted in your letter, this oversight does not affect the operation or effect of the Regulations.

If you wish to discuss this matter further, please contact Tom Speirs, Director, Courts Policy, Strategy and Legislation, DJCS at tom.speirs@justice.vic.gov.au.

Yours sincerely

Sonya Kilkenny
Attorney-General

Date: 13/4/2025





Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Anthony Carbines
Minister for Police
Level 26, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.carbines@justice.vic.gov.au

Dear Minister

SR No. 125 – Firearms Amendment Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 125 – Firearms Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Firearms Regulations 2018. The amendments prescribe particulars and information to be included in records and reports made under the *Firearms Act 1996*.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to one matter.

Section 7 of the *Subordinate Legislation Act 1994* (SLA) requires Ministers to prepare a regulatory impact statement when making a statutory rule, unless an exemption certificate is issued under section 8 of the SLA.

Section 8(3) of the SLA requires an exemption certificate to specify the reasons for the exemption. In that regard please see the [Committee's Practice Note](#), developed to assist government departments with obligations under the SLA.¹

The Regulations are accompanied by an exemption certificate issued under section 8(1)(c) and (g)(i) of the SLA. The Regulations are exempt from preparing a regulatory impact statement on the basis that the Regulations are of a fundamentally declaratory or machinery nature and deal with administration or procedures within or as between Departments or declared

¹ Scrutiny of Acts and Regulations Committee, *Committee Practice Note*, <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>> accessed 12 March 2025, p. 1.

authorities within the meaning of the *Public Administration Act 2004*. The exemption certificate issued for the Regulations states:

[U]nder sections 8(1)(c) and 8(1)(g)(i) of the Subordinate Legislation Act 1994 that in my opinion, the proposed Firearms Amendment Regulations 2024 are of a fundamentally declaratory or machinery nature, and deals with administration or procedures within or as between Departments or declared authorities within the meaning of the Public Administration Act 2004.

Accordingly, a Regulatory Impact Statement is not required for the proposed Firearms Amendment Regulations 2024.

The wording in the exemption certificate states the grounds under which the exemption is issued. However, the certificate does not specify particular reasons for granting the exemption.

In the circumstances, the Subcommittee requests a response specifying reasons for granting the exemption.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Hon Anthony Carbines MP


Minister for Police
Minister for Community Safety
Minister for Victims
Minister for Racing

121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 9136 2888

Our ref: 25033019

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street,
East Melbourne Victoria 3002

Via email sarc@parliament.vic.gov.au

Dear Mr Maas 

SR No. 125—Firearms Amendment Regulations 2024

Thank you for your correspondence dated 17 March 2025 regarding SR No. 125—Firearms Amendment Regulations 2024 (Regulations) and the accompanying exemption certificate issued under sections 8(1)(c) and 8(1)(g)(i) of the *Subordinate Legislation Act 1996* (SL Act).

Your correspondence notes that the exemption certificate states the grounds but not the reasons for which I issued the exemption, and asks that I specify those reasons in my response to the Regulations Review Subcommittee.

The reason for granting the exemption is that I formed the opinion, as required by section 8(1) of the SL Act, that the grounds for the exemption exist. The grounds for the exemption that exist are that the Regulations are fundamentally declaratory or machinery in nature, and deal with administration or procedures within or as between Departments or declared authorities within the meaning of the *Public Administration Act 2004*.

The guidelines issued under section 26 of the SL Act (Guidelines) provide that Ministers should consider the burden imposed by the statutory rule or legislative instrument itself rather than the authorising legislation. The Guidelines note that in some cases, the burden imposed will derive from obligations set out in the authorising Act and the statutory rule or legislative instrument will merely be declaratory or machinery. In my opinion, regulations 1 to 8 of the Regulations are regulations of this nature.

The Regulations also provide for matters of administration as between the Chief Commissioner of Police, the Minister, a magistrate, and the IBAC. The grounds in section 8(1)(g)(i) of the SL Act exist in respect of regulations 6 to 8 of the Regulations to the extent that they deal with administration or procedures within or as between Departments or declared authorities within the meaning of the *Public Administration Act 2004*.



The *Firearms Act 1996* imposes a duty on a police officer to give a person certain information in specified circumstances, duties on the Chief Commissioner of Police to make records that include prescribed particulars, and duties to give records including the prescribed particulars to the IBAC, to the Minister, and to a person specified in that Act. The *Firearms Act 1996* also imposes duties on the IBAC to include the prescribed particulars in the annual report of the IBAC to the Parliament. In my opinion, the grounds in section 8(1)(c) of the SL Act exist to the extent that regulations 6 to 8 of the Regulations prescribe information and particulars for these purposes. Additionally, to the extent that a regulatory burden is attributable to those regulations, a regulatory burden is imposed solely on a public sector body.

I note that on 1 March 2025 the *Subordinate Legislation and Administrative Arrangements Amendment Act 2024* inserted new section 8(1)(da) into the SL Act to provide for an exemption certificate to be issued on the grounds that the proposed statutory rule would only impose a burden on a public sector body. Whilst this ground was not available at the time that I issued an exemption certificate for the Regulations, in my opinion this ground now exists in respect of the Regulations to the extent that they prescribe information and particulars that a public sector body must include in a record or a report required under the *Firearms Act 1996* to be made or provided to an entity in compliance with that Act.

Thank you for the opportunity to support the Regulations Review Subcommittee in its important work in examining statutory rules to ensure that they do not exceed the powers conferred by authorising legislation, and do not unduly trespass on rights and freedoms.

I trust that this information is of assistance to you.

Yours sincerely



Hon Anthony Carbines MP
Minister for Police
Minister for Community Safety
Minister for Victims
Minister for Racing

28/05/2025



Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Gabrielle Williams
Minister for Public and Active Transport
Level 20, 1 Spring Street
Melbourne
Victoria, 3000

By email: receptionminwilliams@transport.vic.gov.au

Dear Minister

SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations provide for the use of digital tickets on V/line services.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994* (SLA).

Section 15A of the SLA requires the responsible Minister to provide specified documentation to the Committee no later than 10 working days after the statutory rule is made. The Regulations were made on 19 November 2024. The specified documentation was received by the Subcommittee on 5 December 2024, 12 working days after the Regulations were made.

Pursuant to section 15A(3) of the SLA, failure to provide this material to the Committee within the timeframe does not affect the operation of the statutory rule. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Gabrielle Williams MP

Minister for Transport Infrastructure
Minister for Public and Active Transport

PO Box 2392
Melbourne, Victoria 3001 Australia

Ref: CMIN-1-25-2480

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
SARC@parliament.vic.gov.au

Dear Mr Maas,

Thank you for your letter of 17 March 2025 regarding SR No. 129 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment Regulations 2024 that were made on 19 November 2024.

I am pleased to receive your advice that the Regulations Review Subcommittee approved the Regulations which provide for the use of digital tickets on V/Line services.

I acknowledge the requirement of section 15A of the *Subordinate Legislation Act 1994* to provide the documents relevant to the making of these Regulations to the Committee no later than 10 working days after the Regulations are made and that the documents were provided on 5 December 2024, which was 12 working days after the Regulations were made. I apologise for the delay in providing the relevant documents to your Committee.

Thank you again for raising this matter.

Sincerely,

Gabrielle Williams MP
Minister for Transport Infrastructure
Minister for Public and Active Transport

27.5.2025





Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Nick Staikos
Minister for Consumer Affairs
2 Treasury Place
East Melbourne
Victoria, 3002

By email: minister.staikos@dgs.vic.gov.au

Dear Minister

SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 130 – Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Residential Tenancies Regulations 2021 and the Residential Tenancies (Rooming House Standards) Regulations 2023. The Regulations prescribe new minimum standards for corded blinds installed at residential rental properties and for heating rooms in rooming houses.

The Subcommittee approved the Regulations.

Pursuant to section 21(1)(j) of the *Subordinate Legislation Act 1994* (SLA), the Subcommittee raises one matter in relation to lodging incorporated documents with the Clerk of the Parliaments.¹

Incorporating material by reference is when legislation gives legal effect to provisions set out in a separate document, without repeating the provisions or content in the text of the legislation itself.² In Victoria, section 32 of the

¹ Section 21(1)(j) of the SLA enables the Subcommittee to consider whether a statutory rule has been prepared in contravention of any of the provisions of the SLA or the Guidelines with respect to the statutory rule.

² David McGee, *Parliamentary Practice in New Zealand*, ed David Wilson (Clerk of the House of Representatives, 5th ed, 2023) p. 25.

Interpretation of Legislation Act 1984 (ILA) sets out the requirements for incorporating material by reference.

The authorising Act must specifically authorise regulations to incorporate material by reference.³ Sections 142C(3) and 511(3)(bc) of the *Residential Tenancies Act 1997* (Act) enable regulations made under the Act to incorporate documents. The Regulations incorporate the following documents:

- National Construction Code⁴
- Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019 made under section 23 and 35 of the Greenhouse and Energy minimum Standards Act 2012 of the Commonwealth on 25 March 2019.

If a statutory rule incorporates documents, section 32(3)(a)(i) of the ILA requires the Minister to cause a copy of the document to be lodged with the Clerk of the Parliaments as soon as practicable after the statutory rule is tabled. Please also refer to the *Subordinate Legislation Act 1994 Guidelines*.⁵

The act of lodgement makes incorporated material publicly available. It is a legal requirement that all material incorporated into subordinate legislation is made publicly available.⁶ This reflects the principle that every person subject to the law should be able to access it.⁷ Additionally, failure to fulfil lodging requirements may lead to issues in relation to enforcement.⁸

The Subcommittee notes neither document incorporated into the Regulations has been lodged with the Clerk of the Parliaments. The Subcommittee requests that the incorporated documents are lodged as soon as practicable.

³ *Interpretation of Legislation Act 1984*, section 32(3).

⁴ This includes Volumes 1 and 2 of the code (defined in both the *Residential Tenancies Regulations 2021* and *Residential Tenancies (Rooming House Standards) Regulations 2023* as “BCA Volume One” and “BCA Volume Two”).

⁵ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines*, <<https://www.parliament.vic.gov.au/491876/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>> accessed 12 March 2025, p. 56.

⁶ *Ibid.*, p. 57.

⁷ *ZL v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] 1 All ER 1062 at [25]; Senate Standing Committee on Regulations and Ordinances, *Guideline on incorporation of documents*, at <https://www.aph.gov.au/~media/Committees/Senate/committee/regord_ctte/guidelines/incorporation.pdf?la=en> accessed 12 March 2025 p. 3.

⁸ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines*, <<https://www.parliament.vic.gov.au/491876/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>> accessed 12 March 2025, p. 57.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Nick Staikos MP

Minister for Consumer Affairs
Minister for Local Government

Level 1, 2 Treasury Place
East Melbourne, Victoria 3002

CMIN-250300983

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
By email: SARC@parliament.vic.gov.au

Dear Mr Maas,

Thank you for your letter of 12 March 2025 about S.R. No. 130 Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024 (Amendment Regulations). I thank the Scrutiny of Acts and Regulations Committee (Subcommittee) for providing me with an extension to 1 May 2025 to provide you with a reply.

I note that your letter confirms that the Subcommittee has approved the Amendment Regulations.

The Amendment Regulations incorporate by reference the following materials:

- Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019
- Volume One of the National Construction Code
- Volume Two of the National Construction Code.

I appreciate you drawing my attention to the requirements under section 32(3) of the *Interpretation of Legislation Act 1984* (ILA) for a copy of incorporated materials to be lodged with the Clerks of Parliament as soon as practicable after the Amendment Regulations were laid before each House of Parliament and for a notice to be published in the Government Gazette after the incorporated materials are lodged. I apologise for the delay in attending to this requirement.

I am pleased to confirm that my department lodged copies of the incorporated materials with the Clerks of Parliament on 29 April 2025 and that the required notice was published in the Government Gazette on 30 April 2025. A copy of the notice will also be lodged with the Clerks.

I have requested that the department also monitors any future amendments that may be made to the incorporated materials to ensure that notice of the amendments and copies of documents containing the amendments can be provided to the Clerks as required under section 32(4) of the ILA.

Thank you again for writing to me about this matter.

Sincerely,

The Hon Nick Staikos MP
Minister for Consumer Affairs
Minister for Local Government

30.4.2025

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.





Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny
 Attorney-General
 Level 20, 1 Spring Street
 Melbourne
 Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

Australian Computer Society Incorporated Professional Standards Scheme

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the legislative instrument Australian Computer Society Incorporated Professional Standards Scheme (LI) at a meeting on 12 March 2025.

The LI is part of a national scheme to limit the occupational liability of members of occupational associations. It limits the occupational liability of members of the Australian Computer Society Incorporated.

The Subcommittee has not yet approved the LI. Pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA), the Subcommittee seeks information about the application of the LI in Victoria.¹

The LI is made under section 14 of the *Professional Standards Act 2003* (Victorian Act). Section 8(4) of the Victorian Act enables professional standards schemes to apply to Victoria or to Victoria and other jurisdictions.

The Australian Computer Society Incorporated Professional Standards Scheme (Scheme) was initially made pursuant to the Professional Standards Act 1994 (NSW) (NSW Act). The Scheme was submitted to the Victorian Attorney-General by the Professional Standards Council of New South Wales. Pursuant to section 14 of the Victorian Act the Attorney-General authorised

¹ Section 21(1)(i) applies to statutory rules. Section 14(2) of the Victorian Act states that Part 5 of the SLA (which includes section 21) applies to the LI as if it were a statutory rule.

the publication of Scheme in the Victorian Government Gazette on 31 October 2024. ~~The publication made the Scheme a legislative instrument in Victoria.~~

The Preamble of the LI states:

D. The Scheme will have force in Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia. To the extent that the Scheme applies to limit liability in jurisdictions other than New South Wales, it is subject to the applicable Professional Standards Legislation.

The LI is intended to apply in New South Wales, Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia “in accordance with, and subject to the requirements of, the corresponding Professional Standards Legislation.”²

Clause 3.2 of the LI is set out in full (emphasis added):

In addition to New South Wales, the Scheme is intended to operate in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia in accordance with, and subject to the requirements of, the corresponding Professional Standards Legislation of those jurisdictions. The references to a provision of the Act,³ the application of the scheme to a liability, the limit of a liability under the Act, or what constitutes Occupational Liability, shall be determined pursuant to the relevant provisions of the corresponding Professional Standards Legislation, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions.

Clause 7.1 provides the definition of “Professional Standards Legislation”, which is:

- (a) the Act;⁴
- (b) Professional Standards Act 1994 (NSW);
- (c) Professional Standards Act 2004 (Qld);
- (d) Professional Standards Act 2004 (SA);
- (e) Professional Standards Act 2005 (Tas);
- (f) Professional Standards Act 1997 (WA);
- (g) Professional Standards Act 2004 (NT); and

² Australian Computer Society Incorporated Professional Standards Scheme, clause 3.

³ “The Act” is defined in the LI to mean the Professional Standards Act 1994 (NSW). See clause 7.1.

⁴ Ibid.

(h) Civil (Wrongs) Act 2002 (ACT).

There is no reference in the definition of “Professional Standards Legislation” in clause 7.1 to the Victorian professional standards legislation, the Victorian Act. Clauses 3.2, 6.1.2 and the Preamble state the LI is intended to apply in Victoria. The NSW Act is included in the definition twice under clause 7.1 paragraphs (a) and (b). The omission of the Victorian Act may be an oversight. However, in those circumstances, it is unclear how the LI applies in Victoria.

The Subcommittee requests information in relation to the application of the LI in Victoria.

Response

The Subcommittee would appreciate your response by Monday, 24 March 2025. This will give the Subcommittee the time to consider the response before the time period for disallowance of the LI ends.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkenny MP

Attorney-General

GPO Box 4356
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 25032834

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
By email: SARC@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 17 March 2025 in relation to the application of the Australian Computer Society Incorporated Professional Standards Scheme (Scheme) in Victoria.

Your letter identified an oversight in the Scheme instrument, where the reference to the *Professional Standards Act 2003 (Vic)* in the definition of “Professional Standards Legislation” was not included and the NSW legislation was included twice.

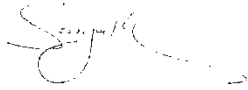
I am of the view that the Scheme instrument is valid, and does not need to be re-made. This is because:

- the Scheme instrument is a form of subordinate legislation and is subject to ordinary statutory interpretation principles;
- these principles hold that when interpreting legislation, it is permissible to depart from the literal meaning of words when there has been a drafting error of the kind made in this case; and
- the instrument would be read consistently with an interpretation that the Scheme is intended to apply in Victoria, because:
 - the instrument otherwise makes it clear that the Scheme is intended to operate in Victoria – as shown by the wording of the Preamble in which it says ‘The Scheme will have force in...Victoria’, as well as clauses 3.2 and 6.1.1; and
 - the second reference to the NSW Act, were it to be read literally, is clearly redundant.



I trust this information is of assistance to the Committee.

Yours sincerely



Sonya Kilkenny
Attorney-General

Date: 16 / 04 / 2025



Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny
Attorney-General
Level 20, 1 Spring Street
Melbourne
Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

Practitioner Remuneration Order 2025

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the Practitioner Remuneration Order 2025 (Order) at a meeting on 12 March 2025.

The Order is a legislative instrument which sets out the costs that may be charged by law practices for providing legal services other than in relation to litigious matters.

The Subcommittee approved the Order.

However, the Subcommittee draws your attention to section 16C of the *Subordinate Legislation Act 1994* (SLA).

Section 16C of the SLA requires the responsible Minister to provide a legislative instrument to the Committee no later than 10 working days after the legislative instrument is made. The Order was made on 2 December 2024. It was received by the Subcommittee on 31 December 2024, 18 working days after the legislative instrument was made.

Pursuant to section 16C(3) of the SLA, failure to provide a legislative instrument to the Committee within the timeframe does not affect the operation of the legislative instrument. However, the Subcommittee notes that timeliness in sending a legislative instrument to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at SARC@parliament.vic.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkenny MP

Attorney-General
Minister for Planning

GPO Box 4356
Melbourne Victoria 3000
Telephone: +61 3 8684 1111

Our ref: 25023831

Mr Gary Maas
Chair, Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

By email: sarc@parliament.vic.gov.au

Dear Chair

Thank you for your letter of 17 March 2025 regarding the Practitioner Remuneration Order 2025 (the Order).

In accordance with section 16C of *Subordinate Legislation Act 1994*, the Order is required to be provided to the Scrutiny of Acts and Regulations Committee (Committee) no later than 10 working days after it is made. In this instance, I acknowledge the Order was provided to the Committee 18 working days after it was made.

I apologise for the delay in providing the Order to the Committee. I appreciate that providing legislative instruments to the Committee in a timely manner is an important component in supporting effective parliamentary oversight of subordinate legislation. Due to an administrative processing issue, there was a delay in providing the Order. I confirm the Order was actioned and processed as soon as the oversight was identified. As noted in your letter, this delay does not affect the operation of the Order.

I trust this information is of use to the Committee.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sonya Kilkenny'.

Sonya Kilkenny
Attorney-General
Minister for Planning

Date: 15/04/2025



Appendix D

Committee Practice Note

EXEMPTIONS

- **Dating certificates.** The Subcommittee has occasionally been presented with undated exemption certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for exemption.** The Subcommittee has occasionally received regulations or legislative instruments exempted under section 8 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 8(3) of the Act that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(e)(iii) and 5A(1) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the Act. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5A(1) certificate itself as required by the Act.
- **Using appropriate exemption categories.** Departmental and agency officers need to be careful when determining which category to use when exempting regulations or legislative instruments from the Regulation Impact Statement process.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

EXTENSION OF TIME

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5A(1) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

The Subcommittee expects that in the event that a second or subsequent extensions of time are sought for a regulation (in addition to an initial request), the Minister inform it that this is the case.

EXPLANATORY MEMORANDA

One copy of the explanatory memorandum for each statutory rule or legislative instrument must be provided to the Subcommittee. The Subcommittee expects explanatory memoranda to comply with page 43 of the *Premier's Guidelines*. As stated in paragraph 196, an explanatory memorandum should be brief and generally contain:

- a brief outline of the statutory rule;
- an explanation of the changes effected by each provision;
- a statement of the reasons for making the statutory rule;
- where applicable, the reasons no RIS was prepared;

- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult; and
- where a statutory rule amends fees in an existing statutory rule, a table comparing the proposed and existing fees (including the percentage increase or decrease for each fee).

FEE INCREASES

An exemption certificate may be issued under sections 8(1)(d) or 12F(1)(c) of the Act on the basis that the proposed statutory rule or legislative instrument only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget. For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it must fall within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Page 28, paragraph 124 of the *Premier's Guidelines* provides that:

A statutory rule can set a package of fees, often known as a 'basket approach'. An example is the Prevention of Cruelty to Animals Regulations 2020 (discussed above) which set about 40 fees for approvals for therapeutic electronic devices, approvals for the use of traps and fees related to rodeos. Where there is to be an increase in one or more individual fees within a basket of fees exceeding the Treasurer's annual rate, but the increase to the basket of fees as a whole is within that rate, then this exemption can apply.

Sections 8(2) and 12F(2) of the Act validate the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered insignificant when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

Description	Current Fee	Proposed Fee	% Increase
Application for	\$100.00	\$105.00	5.0
Application for ...	\$320.00	\$325.00	1.6

CONSULTATION CERTIFICATES

Section 6 and 12C of the Act states that the responsible Minister must ensure that where the Premier's Guidelines require consultation:

- there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule or legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument so that the need for, and the scope of, the proposed statutory rule or legislative instrument is considered;
- a certificate of consultation in accordance with the guidelines is issued for the proposed statutory rule or legislative instrument.

The Premier's Guidelines provide that, where a legislative instrument has been exempted under section 12F(1)(a) of the Act, initial consultation should be undertaken to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

Departments should ensure that consultation certificates are issued under section 6(b) or 12C(b) if required under the Premier's Guidelines.

PROVISION OF DOCUMENTS TO THE COMMITTEE

Pursuant to sections 15A and 16C of the Act, the responsible Minister is required to send the Committee all required documentation within 10 working days after the regulation or legislative instrument has been made. The Subcommittee has a limited time within which to review regulations. The Subcommittee notes in most cases the required documentation is provided to the Committee within 10 working days after the statutory rule or legislative instrument has been made. However, there has been a recent increase in documentation being provided outside the statutory timeframe.

If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation or legislative instrument being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. Accordingly, the Subcommittee needs sufficient time for this process to take place.

Additionally, the Committee prefers to receive all documentation electronically to sarc@parliament.vic.gov.au. However, in the event of a large number of documents the Committee would appreciate hard copies sent c/o SARC Secretariat, Parliament House, Spring Street, East Melbourne VIC 3002.

Appendix E

Committee Checklists

The checklists for documents required by the Committee were updated in November 2020. The current versions have been reproduced below.



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Regulatory Impact Statement Checklist

Section 7 – Regulatory Impact Statement

- Explanatory memorandum
- Recommendation from the Minister to make Regulations (Letter)
- Section 6 consultation certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 10(3) letter of independent assessment
- Section 10(4) compliance certificate
- Section 12A human rights certificate
- Section 13 certificate from the Chief Parliamentary Counsel
- Regulatory Impact Statement (RIS)
- Copy of all submissions
- Summary of all submissions
- Copy of letters sent to those who made submissions
- Copy of draft regulations (*Optional*)
- Copy of RIS newspaper advertisement – Invitation for public comment
- Copy of Government Gazette advertisement – Invitation for public comment
- Copy of RIS newspaper advertisement – Notice of decision
- Copy of RIS Government Gazette advertisement – Notice of decision

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000



PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Statutory Rules
Exemptions Checklist

Section 8(1)(a) – Would not impose Significant Economic or Social Burden

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

- Explanatory Memorandum
- Section 6 Consultation Certificate (*Optional*)
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate

Section 8(1)(c) – Is of a Fundamentally Declaratory or Machinery Nature

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(d) – Only increases Fees in respect of a Financial Year by an amount not exceeding the Annual Rate Approved by the Treasurer

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

Please forward all relevant documents to:
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Melbourne VIC 3000

By email: sarc@parliament.vic.gov.au



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules **Exemptions Checklist**

Section 8(1)(e)(i) and (ii) – Prescribes under section 4(1)(a) or 4(1)(b) an instrument or class of instrument to be a statutory rule or to be exempt

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(e)(iii) – Is an extension regulation

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 5A(1) Minister's extension certificate
- Section 5A(3) Premier's extension certificate
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(e)(iv), (v) and (vi) – Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument or to be exempt

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Statutory Rules
Exemptions Checklist

Section 8(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(g) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(h) – Notice of the proposed statutory rule would render the proposed statutory rule ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed statutory rule

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate (*Optional*)
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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Melbourne VIC 3000

By email: sarc@parliament.vic.gov.au



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules Exemptions Checklist

Section 9 – The Premier may issue a certificate in writing that, in the Premier’s opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate (*Optional*)
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 9 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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Melbourne VIC 3000

By email: sarc@parliament.vic.gov.au



PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Legislative Instruments
Regulatory Impact Statement Checklist

Section 12D – Regulatory Impact Statement

- Legislative instrument
- Explanatory memorandum
- Section 12C consultation certificate
- Section 12D human rights certificate
- Section 12H(3) letter of independent assessment
- Section 12H(4) compliance certificate
- Regulatory Impact Statement (RIS)
- Copy of all submissions
- Summary of all submissions
- Copy of letters sent to those who made submissions
- Copy of RIS newspaper advertisement – Invitation for public comment
- Copy of Government Gazette advertisement – Invitation for public comment
- Copy of RIS newspaper advertisement – Notice of decision
- Copy of RIS Government Gazette advertisement – Notice of decision

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Melbourne VIC 3000



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments Exemptions Checklist

Section 12F(1)(a) – Would not impose a significant economic or social burden

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(b) – Is of a fundamentally declaratory or machinery nature

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(c) – Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(d) – Only imposes a burden on a public sector body

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(e) – An order made under the *Administrative Arrangements Act 1983*

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

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Melbourne VIC 3000

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments Exemptions Checklist

Section 12F(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(g) – Is required to undergo, or has undergone, an analytical and consultation process which, in the opinion of the responsible Minister, is equivalent to the process for a regulatory impact statement required until section 12E

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(h) – Is not of more than 12 months duration and is necessary to respond to: (i) a public emergency; (ii) an urgent public health issue or an urgent public safety issue; or (iii) likely or actual significant damage to the environment, resource sustainability or the economy

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D(3) Human Rights Exemption Certificate
- Section 12F Exemption Certificate

Section 12F(1)(i) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

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Melbourne VIC 3000

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments Exemptions Checklist

Section 12F(1)(j) – Notice of the proposed legislative instrument would render the proposed legislative instrument ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed legislative instrument

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(k) – Is made under a statutory rule and the regulatory impact statement for that statutory rule has adequately considered the impact of the proposed legislative instrument

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12G – The Premier may issue a certificate in writing that, in the Premier’s opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- Legislative instrument
- Explanatory Memorandum
- Reasons given by the responsible Minister to the Premier as to why the public interest requires that the legislative instrument be made without preparing a RIS
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12G Exemption Certificate

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Melbourne VIC 3000

By email: sarc@parliament.vic.gov.au

